

**CITY OF NEWPORT BEACH  
PLANNING COMMISSION STAFF REPORT**

September 19, 2013 – Study Session  
Agenda Item No. 3

**SUBJECT:** Wireless Telecommunications Facilities Ordinance (PA2012-057)  
• Code Amendment No. CA2012-004

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**PROJECT SUMMARY**

An amendment to the Newport Beach Municipal Code (“NBMC”) to update regulations regarding wireless telecommunication facilities (“Telecom Facilities”). Regulations currently contained in Chapter 15.70 would be updated and relocated to Title 20 (Planning and Zoning) and Chapter 15.70 would be rescinded in its entirety.

**RECOMMENDED ACTION**

Review and comment on the proposed draft ordinance.

**DISCUSSION**

The Telecommunications (Telecom) Ordinance was adopted by City Council in October 2002, codifying the regulations and design standards for telecom facilities within the City. At the time the telecom ordinance was adopted, state and federal case law suggested cities were somewhat limited in how telecom facilities could be regulated. However, more recent case law favors more appropriate local control to ensure the compatibility of these facilities with surrounding uses, similar to the manner in which other land uses are reviewed. Additionally, staff identified several issues based upon its experiences implementing the current ordinance that could be addressed by the update.

The City Council initiated the amendment process in March 2012. Staff then prepared a comprehensive update of the existing Wireless Telecommunications Facilities Ordinance (“Telecom Ordinance”). In summary, the existing Telecom Ordinance (Chapter 15-70) would be updated in its entirety and relocated to the Zoning Code (Title 20). The item was introduced to the Planning Commission in July 2012, and was continued to allow for an expanded dialog with the telecommunications industry. After meeting with industry representatives in July 2012, staff returned to the Planning Commission in September 2012, where the Commission held a study session. A copy of the agenda packet and approved minutes for the September 6, 2012, study session can be found at the City’s website at the following web address:

<http://ecms.newportbeachca.gov/Web/Browse.aspx?startid=321452&cnb=PlanningCommissionMeetings&dbid=0>

The current draft ordinance (Attachment PC 1) was distributed to interested stakeholders, including several industry representatives, in June 2013. The draft ordinance remains a work in progress. Since the last draft, staff has modified the overall structure of the ordinance, making an underline/strikeout version extremely confusing to read. Additional refinements will be proposed based upon further input from the Commission, public, and City staff.

The following discussion summarizes various issues raised, direction, and in some cases additional suggested changes. Staff also received several comments letters on the draft ordinance that are attached (Attachment PC 2).

### **1. Discretionary Permit Process [Sections 20.49.020 and 20.49.070]**

Telecom industry representatives requested an administrative process and limited use of discretionary applications. At the prior study session, the Planning Commission agreed and also suggested that when discretionary review would be required, the Zoning Administrator would be the appropriate review authority for simpler requests and that the Planning Commission would only review the most visible proposals. One purpose of the proposed ordinance is to provide a review process and public notice of proposed facilities through the existing land use entitlement process. Staff believes that the discretionary process is appropriate for visible facilities whether on public or private property or within the public right-of-way. Additionally, staff believes the discretionary process is a reasonable exercise of the City's right to control the time, place, and manner Telecom Facilities are established within the public right-of-way. To address the concern that the discretionary process is applied too broadly, staff modified the draft ordinance such that stealth/screened facilities located in allowed zones on private property and on public property be administratively approved without providing notice to the public. All other facilities would require a Minor Use Permit (MUP), Conditional Use Permit (CUP), or Limited Term Permit (LTP).

### **2. Legal Nonconforming Facilities [Section 20.49.020 (F)]**

Industry representatives were concerned that existing facilities would be required to either be changed or phased out in the future. The draft ordinance provides for the maintenance and continuation of existing facilities that were lawfully constructed but would be considered nonconforming because they would not comply with the provisions of the proposed ordinance. These legal nonconforming facilities would not be required to be modified or amortized. Future facilities proposed or the future modification of existing facilities would be required to comply with the adopted Telecom Ordinance.

### **3. Definitions [Section 20.49.030]**

There were comments regarding the need to improve the clarity of definitions. The establishment of appropriate antenna classifications was one area in need of clarification. The prior draft had descriptions of Antenna Classes in a subsection that established priority

locations. Staff has relocated the descriptions of the proposed Antenna Classes to the subsection providing definitions. Please also note that the antenna classifications have changed from the prior draft, which is discussed below.

#### **4. Technology Requirements [Formerly Section 20.49.040]**

Comments were received indicating that the use of, "...the most efficient, diminutive and least obtrusive technology..." is inappropriate and could theoretically be used to discriminate among carriers based upon their technology. The current ordinance in effect provides this policy language; however, the key factor is that a new facility be unobtrusive. Staff has modified the draft to stress that new facilities be designed to be as unobtrusive as possible. The modified section is now located in section 20.49.010, subsection C. The draft ordinance also includes language in indicating that the Telecom Ordinance cannot be applied in a manner that as to unreasonably discriminate among providers of functionally equivalent services.

#### **5. Location Preferences/Antenna Classifications [Section 20.49.050]**

The proposed classification system with the prior draft ordinance was confusing and the revised draft ordinance would establish five telecom facility classifications:

1. Class 1 (Stealth/Screened)
2. Class 2 (Visible)
3. Class 3 (Public Right-of-Way Installations)
4. Class 4 (Freestanding Structure)
5. Class 5 (Temporary)

The revised draft ordinance indicates a hierarchy that was originally based upon the current ordinance and previous draft. With the revised classification system above, staff believes the hierarchy should be modified as Class 3 and Class 5 do not seem to be more desirable than any other installation when all facilities must be designed or located to be the least visually unobtrusive. Additionally, there may be a circumstance where a Class 3 facility may be a better option than a Class 2. If a hierarchy is retained, it recommends that it be Class 1, Class 2, and then Class 4.

#### **6. Location Preferences, Prohibited Locations [Section 20.49.050 (B)]**

Industry representatives have indicated a need to access all zones including all residential areas. The current ordinance does not allow Telecom Facilities to be installed on residential lots (including residential portions of Planned Communities or Specific Plans) or in passive open space zones except under very limited circumstances. Common area or non-residential lots within residential zones, multi-family buildings, and collocated installations on existing utility towers in utility easements within passive open space zones are the only exceptions and they currently require City Council approval. The proposed ordinance: 1) maintains the same prohibited locations; 2) it provides for Planning Commission review at

public hearings for exceptions to height standards; and 3) it provides access to low-density residential areas within the public right-of-way provided they meet applicable design standards. The revised draft does contain a typographical error in that it lists streetlights as prohibited locations. Staff intended to prohibit telecom facilities on traffic control standards not streetlights. This error will necessitate other changes for internal consistency.

## **7. Location Preferences, Installations in the Public Right-of-Way [Section 20.49.050 (C)]**

Industry representatives contend that this section includes unreasonable limitations on their use of the public right-of-way. The draft ordinance requires compliance with Title 13 (Streets and Highways) and proposed facilities must also comply with Chapter 15.32 (Undergrounding Utilities) of the Municipal Code. The City controls the time, place, and manner in which the public right-of-way is accessed. Antennas can be installed on existing vertical poles; however, new poles within underground districts may not be permissible pursuant to provisions of Title 13 and Chapter 15.32 of the Municipal Code. Support equipment, with the exception of pedestal meters, may be required to be located underground in areas where existing utilities are underground and Title 13 also requires new support equipment to be placed in underground vaults. Staff believes that the existing provisions of Title 13 and Chapter 15.32 are consistent with State law.

## **8. General Development and Design Standards [Section 20.49.060]**

The emphasis on making Telecom Facilities as inconspicuous as possible has been the basic goal of the Telecom Ordinance currently in effect. This section provides screening methods for each Antenna Class and it addresses public view protection, support equipment, and maintenance among other issues. Staff believes the standards are appropriate; however, staff does recommend the removal of the term, “To the greatest extent feasible” from the general criteria provisions as it would weaken the requirement to design Telecom Facilities to minimize visual impacts.

## **9. Height [Section 20.49.060 (C)]**

The telecom industry almost universally wants taller facilities to provide better coverage. Additionally, the industry does not want to be subject to a Variance process if there is a need for a facility taller than allowed. The ordinance currently in effect allows Telecom Facilities on private property to be no taller than the upper height limit (e.g., 35 feet in the 26/35-foot height limitation zone). Telecom Facilities proposed within the public right-of-way on streetlights or other structures are limited to 35 feet and antennas proposed on existing power transmission lines that are taller than 35 feet cannot be taller than the existing pole. The City Council can authorize an additional 15 feet without a public hearing and if there is a need for a facility taller, the current code does not provide a process for deviation.

The proposed draft ordinance would change the height requirements stated above by allowing Telecom Facilities to be 5 feet above the base height limit (e.g., 26 feet in the 26/35

foot height limitation zone + 5 feet = 31 feet). This standard treats Telecom Facilities similar to how sloped roofs, elevator shafts, and screened rooftop mechanical equipment are allowed to exceed the based height limit. Discretionary review would be required for a proposal above this standard up to the upper height limit (e.g., 35 feet in the 26/35 foot height limitation zone). A Variance would be required for facilities proposed to exceed the upper height limit.

#### **10. Setback Standards [Section 20.49.060 (D)]**

The prior draft included an additional setback distance of 110 percent of the facility's height as a "fall zone" setback. Staff recommended its elimination at the prior study session and with the Planning Commission's concurrence, it was removed from the current draft.

#### **11. Screening Standards [Section 20.49.060 (F)]**

This subsection provides standards for screening antennas and support equipment for the five proposed antenna classes. This section was modified from the prior draft ordinance to reflect the changes in proposed antenna classifications.

#### **12. Permit Review Procedures [Section 20.49.070]**

Past comments suggested that the review process was burdensome and the Commission suggested that the process expand the use of administrative approvals and make many Telecom applications subject to review by the Zoning Administrator rather than the Planning Commission. The current draft ordinance contains Table 4-1 that identifies which approval or permit application is required for each Antenna Class while introducing a 150 foot proximity standard. The entries for Class 2 and Class 4 facilities are complicated given an attempt to reflect currently prohibited zones.

1. **Class 1** facilities would be allowed administratively provided the facilities meet applicable location and design standards.
2. **Class 2** facilities should have a more simplified approach where a CUP would only be required when a facility is proposed within a specified distance of residential uses or all Class 2 facilities might only require a MUP.
3. **Class 3** facilities would require a MUP and fall under the jurisdiction of the Zoning Administrator. Additionally, since Class 3 facilities are in the public right-of-way, the Public Works Department would review the proposals for consistency with Title 13 and to ensure appropriate control of the time, place, and manner of use of the right-of-way. Staff would process required license agreements and encroachment permits or encroachment agreements for approved facilities.
4. **Class 4** facilities would require a CUP to be reviewed by the Planning Commission unless it was proposed within 150 feet of a residential district where a MUP would be required, which would be reviewed by the Zoning Administrator. Staff recommends this provision be reversed or that all new freestanding structures require CUPs.

5. **Class 5** facilities are temporary and would require an LTP and also fall under the jurisdiction of the Zoning Administrator. Lastly, the revised draft ordinance has been updated to remove several internal inconsistencies.

### **13. License Agreements for City-Owned Property [Section 20.49.090]**

A license agreement for the use of City owned structures or property is required by the current Telecom Ordinance. The requirement would remain with the proposed update and the license agreement could be reviewed concurrently with the review of the Telecom Facility.

### **14. Modification of existing facilities [Section 20.49.100]**

This section is entirely new and it was drafted in response to 2012 federal regulations. Federal law prohibits a state or local government from denying a request to modify an existing facility under particular conditions when the modification does not “substantially change the physical dimensions of a tower or base station.” Federal law does not define what is considered a “substantial” change and staff recommends a five percent standard to ensure that public views are protected and visual impacts are avoided.

### **15. Radio Frequency (RF) Emissions Reporting [Section 20.49.110]**

The current telecom ordinance required RF compliance reporting and this section is intended to continue the policy of requiring them. Staff has received comments indicating that RF emission reports are unnecessary given Federal Communications Commission (FCC) oversight. It is acknowledged that telecom facility cannot be operated with RF emissions that exceed applicable FCC standards. The compliance report is a simple means to document compliance. The telecom industry is also concerned about the use of RF emissions as a consideration in the review of applications for proposed facilities. The City acknowledges that RF emissions are under the jurisdiction of the FCC and that the consideration of RF emissions for FCC compliant facilities is precluded by federal law.

#### Next Steps

Based upon Commission direction and public feedback, staff will prepare a final revised draft ordinance that will be published in advance of a future public hearing to allow for review and comment.

Prepared by:

Submitted by:

  
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**ATTACHMENTS**

PC 1 Draft Ordinance  
PC 2 Comment Letters

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# ATTACHMENT PC 1

Draft Ordinance

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## Chapter 20.49 – Wireless Telecommunications Facilities

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### Sections

20.49.010 – Purpose

20.49.020 – Effect of Chapter

#### **General Provisions**

20.49.030 – Definitions

**20.49.040 – Available Technology**

20.49.050 – Location Preferences

20.49.060 – General Development and Design Standards

20.49.070 – Permit Review Procedures

20.49.080 – Permit Implementation, Time Limits, Duration, and Appeals

20.49.090 – Agreement for Use of City-owned or City-held Trust Property

20.49.100 – Modification of Existing Telecom Facilities

20.49.110 – Operational and Radio Frequency Compliance and Emissions Report

20.49.120 – Right to Review or Revoke Permit

20.49.130 – Removal of Telecom Facilities

### **20.49.010 – Purpose**

- A.** The purpose of this Chapter is to provide for wireless telecommunication facilities (“Telecom Facilities”) on public and private property consistent with state and federal law while ensuring public safety, reducing the visual effects of telecom equipment on public streetscapes, protecting scenic, ocean and coastal public views, and otherwise mitigating the impacts of such facilities. More specifically, the regulations contained herein are intended to; 1) encourage the location of Antennas in non-residential areas, 2) encourage Collocation at new and existing Antenna sites, and 3) encourage Telecom Facilities to be located in areas where adverse visual impacts on the community and public views are minimized.
- B.** The provisions of this Chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This Chapter shall be applied to providers, operators, and maintainers of wireless services regardless of whether authorized by state or federal regulations. This Chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services.
- C.** All Telecom Facilities approved under this Chapter shall utilize the most efficient and least obtrusive available technology in order to minimize the number of Telecom Facilities in the City and reduce their visual impact on the community and public views.

## **20.49.020 – Effect of Chapter**

- A. Regulatory Scope.** These regulations are applicable to all Telecom Facilities providing voice and/or data transmission such as, but not limited to, cell phone, internet and radio relay stations.
- B. Permit and/or Agreement Required.** Prior to construction of any Telecom Facility in the City, the applicant shall obtain a Minor Use Permit (MUP), Conditional Use Permit (CUP), Limited Term Permit (LTP), or Zoning Clearance (ZC), depending on the proposed location, Antenna Class, and method of installation, in accordance with Section 20.49.070 (Permit Review Procedures). Applicants who obtain a MUP, CUP, LTP, or ZC (and an encroachment permit, if required) for any Telecom Facility approved to be located on any City-owned property or City-held Trust property, shall enter into an agreement prepared and executed by the City Manager or its designee prior to construction of the Facility, consistent with Section 20.49.090 (Agreement for Use of City-owned or City-held Trust Property).
- C. Exempt Facilities.** The following types of facilities are exempt from the provisions of this Chapter:
1. Amateur radio antennas and receiving satellite dish antennas, and citizen band radio antennas regulated by Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities).
  2. Dish and other antennas subject to the FCC Over-the-Air Reception Devices (“OTARD”) rule, 47 C.F.R. § 1.4000 that are designed and used to receive video programming signals from (a) direct broadcast satellite services, or (b) television broadcast stations, or (c) for wireless cable service.
  3. During an emergency, as defined by Title 2 of the NBMC, the City Manager, Director of Emergency Services or Assistant Director of Emergency Services shall have the authority to approve the placement of a Telecom Facility in any district on a temporary basis not exceeding ninety (90) calendar days from the date of authorization. Such authorization may be extended by the City on a showing of good cause.
  4. Facilities exempt from some or all of the provisions of this Chapter by operation of state or federal law to the extent so determined by the City.
  5. Systems installed or operated at the direction of the City or its contractor.
  6. Systems installed entirely within buildings for the sole purpose of providing wireless telecommunications services or data transmission services to building occupants.
- D. Other Regulations.** Notwithstanding the provisions of this Chapter, all Telecom Facilities within the City shall comply with the following requirements:

1. Rules, regulations, policies, or conditions in any permit, license, or agreement issued by a local, state or federal agency which has jurisdiction over the Telecom Facility.
  2. Rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).
- E. Regulations not in Conflict or Preempted.** All Telecom Facilities within the City shall comply with the following requirements unless in conflict with or preempted by the provisions of this Chapter:
1. All applicable City design guidelines and standards.
  2. Requirements established by any other provision of the Municipal Code and by any other ordinance and regulation of the City.
- F. Legal Nonconforming Facility.** Any Telecom Facility that is lawfully constructed, erected, or approved prior to the effective date of this Chapter that is operating in compliance with all applicable laws, and which Facility does not conform to the requirements of this Chapter shall be accepted and allowed as a legal nonconforming Facility if otherwise approved and constructed. Legal nonconforming Telecom Facilities shall comply at all times with the laws, ordinances, and regulations in effect at the time the application was deemed complete, and any applicable federal and state laws as they may be amended or enacted, and shall at all times comply with any conditions of approval.

#### **20.49.030 – Definitions.**

For the purposes of this Chapter, the following definitions shall apply:

- A. Antenna.** Antenna means a device used to transmit and/or receive radio or electromagnetic waves between earth and/or satellite-based systems, such as reflecting discs, panels, microwave dishes, whip antennas, Antennas, arrays, or other similar devices.
- B. Antenna Array.** Antenna Array means Antennas having transmission and/or reception elements extending in more than one direction, and directional Antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and Antenna support, all of which elements are deemed to be part of the Antenna.
- C. Antenna Classes.** Antenna Classes are Telecom Facilities and the attendant Support Equipment separated into the following distinct classes:
1. Class 1 (Stealth/Screened): a Facility with Antennas mounted on an existing or proposed non-residential building or other structure not primarily intended to be an antenna support structure where Antennas and Support Equipment, including the base station, are fully screened so that they are not visible to the general public.

2. **Class 2 (Visible):** a Facility with Antennas mounted on an existing non-residential building, structure, pole, light standard, Utility Tower, Wireless Tower and/or Lattice Tower.
  3. **Class 3 (Public Right-of-Way Installations):** a Facility with Antennas installed on a structure located in the public right-of-way.
  4. **Class 4 (Freestanding Structure):** a Facility with Antennas mounted on a new freestanding structure constructed for the sole or primary purpose of supporting the Telecom Facility.
  5. **Class 5 (Temporary):** a Facility including associated Support Equipment that is installed at a site on a temporary basis pursuant to a Limited Term Permit. A Class 5 installation may also be installed in connection with a special event upon the approval of a Special Events Permit pursuant to Chapter 11.03 without a Limited Term Permit.
- D. Base Station.** Base Station means the electronic equipment at a Telecom Facility installed and operated by the Telecom Operator that together perform the initial signal transmission and signal control functions. Base Station does not include the Antennas and Antenna support structure, or the Support Equipment, nor does it include any portion of DAS.
- E. City-owned or City-held Trust Property.** City-owned or City-held Trust Property means all real property and improvements owned, operated or controlled by the City, other than the public right-of-way, within the City's jurisdiction, including but is not limited to City Hall, Police and Fire facilities, recreational facilities, parks, libraries, monuments, signs, streetlights and traffic control standards.
- F. Collocation.** Collocation means an arrangement whereby multiple Telecom Facilities are installed on the same building or structure.
- G. Distributed Antenna System, DAS.** Distributed Antenna System (DAS) means a network of one or more Antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one or more third-party wireless service providers. DAS also includes the equipment location, sometimes called a "hub" or "hotel" where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services.
- H. FCC.** FCC means the Federal Communications Commission, the federal regulatory agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.
- I. Feasible.** Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal and technological factors.

- J. Lattice Tower.** Lattice Tower means a freestanding open framework structure used to support Antennas, typically with three or four support legs of open metal crossbeams or crossbars.
- K. Monopole.** Monopole means a single free-standing pole or pole-based structure solely used to act as or support a Telecom Antenna or Antenna Arrays.
- L. Operator or Telecom Operator.** Operator or Telecom Operator means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a Telecom Facility or facilities within the City.
- M. Public Right-of-Way.** Public Right-of-Way or (“PROW”) means the improved or unimproved surface of any street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. PROW includes public streets, roads, lanes, alleys, sidewalks, medians, parkways and landscaped lots.
- N. Stealth or Stealth Facility.** Stealth or Stealth Facility means a Telecom Facility in which the Antenna, and the Support Equipment, are completely hidden from view in a monument, cupola, pole-based structure, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures which are obviously not such a natural or architectural feature to the average observer do not qualify within this definition. A false tree is not a Stealth Facility.
- O. Support Equipment.** Support Equipment means the physical, electrical and/or electronic equipment included within a Telecom Facility used to house, power, and/or contribute to the processing of signals from or to the Facility’s Antenna or Antennas, including but not limited to a base station, cabling, air conditioning units, equipment cabinets, pedestals, and electric service meters. Support Equipment does not include DAS, Antennas or the building or structure to which the Antennas or other equipment are attached.
- P. Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or Facility.** Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or simply Facility or Facilities means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.
- Q. Utility Pole.** Utility Pole means a single freestanding pole used to support services provided by a public or private utility provider.
- R. Utility Tower.** Utility Tower shall mean an open framework structure (see lattice tower) or steel pole used to support electric transmission facilities.

- S. Wireless Tower.** Wireless Tower means any structure built for the sole or primary purpose of supporting Antennas used to provide wireless services authorized by the FCC. A Distributed Antenna System (DAS) installed pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission on a water tower, utility tower, street light, or other structures built or rebuilt or replaced primarily for a purpose other than supporting wireless services authorized by the FCC, including any structure installed pursuant to California Public Utility Code Section 7901, is not a Wireless Tower for purposes of this definition. For an example only, a prior-existing light standard which is replaced with a new light standard to permit the addition of Antennas shall not be considered a Wireless Tower, but rather a replacement light standard.

#### **20.49.050 – Location Preferences.**

- A. Preferred Locations.** To limit the adverse visual effects of and proliferation of new or individual Telecom Facilities in the City, the following list establishes the order of preference for the location and installation of Telecom Facilities, from highest priority location and technique to lowest.

1. Collocation of a new facility at an existing facility.
2. Class 1.
3. Class 2.
4. Class 3.
5. Class 4.
6. Class 5.

- B. Prohibited Locations.** Telecom Facilities are prohibited in the following locations:

1. On properties zoned for single-unit or two-unit residential development, including equivalent PC District designation.
2. On properties zoned for multi-unit residential development and mixed-use development where the maximum allowable number of dwelling units is four (4) units.
3. In the Open Space (OS) zoning district, unless Telecom Facilities are collocated on an existing Utility Tower within a utility easement area, or collocated on an existing Telecom Facility.
4. On streetlights.

- C. Installations in the Public Right-of-Way.** All Telecom Facilities proposed to be located in the public right-of way shall comply with the provisions of Title 13. Antenna installations on



an existing or replacement streetlight pole shall be compatible in design, scale, and proportion to streetlights and the pole on which they are mounted.

**D. Collocation Installations.** A new Telecom Facility proposed within one thousand (1,000) feet of an existing Telecom Facility shall be required to collocate on the same building or structure as the existing Telecom Facility.

1. Exception: If the reviewing authority determines, based on compelling evidence submitted by the applicant, that Collocation of one or more new Telecom Facilities within one thousand (1,000) feet of an existing Telecom Facility is not Feasible, then such Collocation shall not be required.
2. Condition Requiring Future Collocation. In approving a Telecom Facility, the review authority may impose a condition of approval providing for future Collocation of Telecom Facilities by other carriers at the same site.

#### **20.49.060 – General Development and Design Standards.**

**A. General Criteria.** All Telecom Facilities shall employ design techniques to minimize visual impacts and provide appropriate screening to result in the least intrusive means of providing the service. Such techniques shall be employed to make the installation, appearance and operations of the Telecom Facility as visually inconspicuous as possible. To the greatest extent Feasible, Telecom Facilities shall be designed to minimize the visual impact of the Telecom Facility by means of location, placement, height, screening, landscaping, and shall be compatible with existing architectural elements, building materials, other building characteristics, and the surrounding area.

In addition to the other design standards of this Section, the following criteria shall be considered by the review authority in connection with its processing of any MUP, CUP, LTP, or ZC for a Telecom Facility:

1. Blending. The extent to which the proposed Telecom Facility blends into the surrounding environment or is architecturally compatible and integrated into the structure.
2. Screening. The extent to which the proposed Telecom Facility is concealed or screened by existing or proposed new topography, vegetation, buildings or other structures.
3. Size. The total size of the proposed Telecom Facility, particularly in relation to surrounding and supporting structures.
4. Location. Proposed Telecom Facilities shall be located so as to utilize existing natural or man-made features in the vicinity of the Telecom Facility, including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening and blending with the predominant visual backdrop.

**B. Public View Protection.** Telecom Facilities involving a site adjacent to an identified public view point or corridor, as identified in General Plan Policy NR 20.3 (Public Views), shall be reviewed to evaluate the potential impact to public views consistent with Section 20.30.100 (Public View Protection).

**C. Height.**

1. Telecom Facilities installed on buildings or other structures shall comply with the base height limit established in Part 2 (Zoning Districts, Allowable Uses, and Zoning District Standards) for the zoning district in which the Telecom Facility is located.
2. Applications for the installation of Telecom Facilities proposed to be greater than the base height limit for the zoning district in which the Telecom Facility is located shall be subject to review and action by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP for a Telecom Facility to exceed the base height limit after making all of the required findings in Section 20.49.070.H (Permit Review Procedures).
3. All Telecom Facilities shall comply with Antenna height restrictions, if any, required by the Federal Aviation Administration, and shall comply with Section 20.30.060.E. (Airport Environs Land Use Plan (AELUP) for John Wayne Airport and Airport Land Use Commission (ALUC) Review Requirements) as may be in force at the time the Telecom Facility is permitted or modified.
4. Antennas shall be installed at the minimum height possible to provide average service to the Telecom Operator's proposed service area. In any case, no Antenna or other telecom equipment or screening structure shall extend higher than the following maximum height limits:
  - a. Telecom Facilities installed on streetlight standards, Utility Poles, Utility Towers or other similar structures within the public right-of-way shall not exceed 35 feet in height above the finished grade.
  - b. Telecom Facilities may be installed on existing Utility Poles or Utility Towers that exceed 35 feet above the finished grade where the purposes of the existing Utility Pole or Utility Tower is to carry electricity or provide other wireless data transmission provided that the top of the Antenna does not extend above the top of the Utility Pole or Utility Tower.
  - c. Telecom Facilities installed in ground-mounted flagpoles may be installed at a maximum height of 35 feet.

**D. Setbacks.** Proposed Telecom Facilities shall comply with the required setback established by the development standards for the zoning district in which the Telecom Facility is

proposed to be located. Setbacks shall be measured from the part of the Telecom Facility closest to the applicable lot line or structure.

**E. Design Techniques.** Design techniques shall result in the installation of a Telecom Facility that is in scale with the surrounding area, hides the installation from predominant views from surrounding properties, and prevents the Telecom Facility from visually dominating the surrounding area. Design techniques may include the following:

1. Screening elements to disguise, or otherwise hide the Telecom Facility from view from surrounding uses.
2. Painting and/or coloring the Telecom Facility to blend into the predominant visual backdrop.
3. Siting the Telecom Facility to utilize existing features (buildings, topography, vegetation, etc.) to screen or hide the Telecom Facility.
4. Utilizing simulated natural features (trees, rocks, etc.) to screen or hide the Telecom Facility.
5. Providing Telecom Facilities of a size that, as determined by the City, is not visually obtrusive such that any effort to screen the Telecom Facility would create greater visual impacts than the Telecom Facility itself.

**F. Screening Standards.** For Collocation installations, the screening method shall be materially similar to those used on the existing Telecom Facility, and shall not diminish the screening of the Telecom Facility. If determined necessary by the review authority, use of other improved and appropriate screening methods may be required to screen the Antennas and Support Equipment from public view. The Following is a non-exclusive list of potential design and screening techniques that should be considered:

1. For Class 1 (Stealth/Screened) Antenna Installations:
  - a. All Telecom Facility components, including all Antenna panels and Support Equipment, shall be fully screened, and mounted either inside the building or structure, or behind the proposed screening elements and not on the exterior face of the building or structure.
  - b. Screening materials shall match in color, size, proportion, style, and quality with the exterior design and architectural character of the structure and the surrounding visual environment. If determined necessary by the reviewing authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
  - c. In conditions where the Antennas and Support Equipment are installed within a new freestanding structure, (an architectural feature such as a steeple, religious symbol

or tower, cupola, clock tower, sign, etc.), the installation shall blend in the predominant visual backdrop so it appears to be a decorative and attractive architectural feature.

2. For Class 2 (Visible) Antenna Installations:

- a. Building or structure mounted Antennas shall be painted or otherwise coated to match or complement the predominant color of the structure on which they are mounted and shall be compatible with the architectural texture and materials of the building to which the Antennas are mounted. No cables and mounting brackets or any other associated equipment or wires shall be visible from above, below or the side of the Antennas.
- b. All Antenna components and Support Equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.

3. For Class 3 (Public Right-of-Way) Antenna Installations:

- a. Whenever Feasible, new Antennas proposed to be installed in the public right-of-way shall be placed on existing or replacement utility structures, light standards, or other existing vertical structures. Antenna installations on existing or replacement streetlight poles, traffic control standards, or Utility Poles shall be screened by means of canisters, radomes, shrouds other screening measures whenever Feasible, and treated with exterior coatings of a color and texture to match the existing pole.
- b. If Antennas are proposed to be installed without screening, they shall be flush-mounted to the pole and shall be treated with exterior coatings of a color and texture to match the existing pole.
- c. If a new pole is proposed to replace an existing pole, the replacement pole shall be consistent with the size, shape, style and design of the existing pole, including any attached light arms.

4. For Class 4 (Freestanding Structure) Antenna Installations:

- a. For a false rock, the proposed screen structure shall match in scale and color other rock outcroppings in the general vicinity of the proposed site. A false rock screen may not be considered appropriate in areas that do not have natural rock outcroppings.
- b. The installation of a false tree (such as but without limitation a monopine or monopalme, or false shrubbery) shall be designed for and located in a setting that is compatible with the proposed screening method. Such installations shall be situated

so as to utilize existing natural or manmade features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening. For false trees or shrubbery installations, all Antennas and Antenna supports shall be contained within the canopy of the tree design, and other vegetation comparable to that replicated in the proposed screen structure shall be prevalent in the immediate vicinity of the antenna site, and the addition of new comparable living vegetation may be necessary to enhance the false tree or shrubbery screen structure.

- c. For installations of a flagpole, the pole shall not exceed 24 inches in width at the base of the flagpole and also shall not exceed 20 inches in width at the top of the flagpole.

5. For Class 5 (Temporary) Antenna Installations:

- a. A temporary Telecom Facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary by the review authority, the appropriate screening methods will be determined through the permitting process reflecting the temporary nature of the Telecom Facility.

6. Support Equipment. All Support Equipment associated with the operation of any Telecom Facility shall be placed or mounted in the least visually obtrusive location possible, and shall be screened from view.

- a. Installations on Private Property. The following is a non-exclusive list of potential screening techniques for Telecom Facilities located on private property:

- (1) Building-Mounted Facilities. For building or structure-mounted Antenna installations, Support Equipment for the Telecom Facility may be located inside the building, in an underground vault, or on the roof of the building that the Telecom Facility is located on, provided that both the equipment and any screening materials are architecturally compatible and/or painted the color of the building, roof, and/or surroundings thereby providing screening. If placed in an underground vault, flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view may be incorporated.

- (2) Roof-Mounted Facilities. All screening materials for roof-mounted Telecom Facilities shall be of a quality and design compatible with the architecture, color, texture and materials of the building to which it is mounted. If determined necessary by the review authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.

- (3) Freestanding Facilities. For freestanding Telecom Facilities installations, not mounted on a building or structure, Support Equipment for the Telecom Facility may be visually screened by locating the Support Equipment in a fully enclosed building, in an underground vault, or in a security enclosure consisting of walls and/or landscaping to effectively screen the Support Equipment at the time of installation.
  - (4) All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings.
  - (5) Screening enclosures may utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a “closed-mesh” design (i.e. one-inch gaps) or may consist of an alternate enclosure design approved by the review authority. In general, the screening enclosure shall be made of non-reflective material and painted to blend with surrounding materials and colors.
  - (6) If placed in an underground vault, flush-to-grade vents, or alternatively, vents that extend no more than 24 inches above the finished grade and are screened from public view may be utilized.
- b. Installations in a Public Right-of-Way. The following is a non-exclusive list of potential screening techniques for Telecom Facilities located in a public right-of-way:
- (1) Where the existing utilities services (e.g., telephone, power, cable TV) are located underground, the Support Equipment shall be placed underground, consistent with Chapter 13.20. Flush-to-grade underground vault enclosures, including flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view may be incorporated. Electrical meters required for the purpose of providing power for the proposed Telecom Facility may be installed above ground on a pedestal in a public right-of-way.
  - (2) Support equipment approved to be located above ground in a public right-of-way shall be painted or otherwise coated to be visually compatible with the existing or replacement pole, lighting and/or traffic signal equipment without substantially increasing the width of the structure.
  - (3) All transmission or amplification equipment such as remote radio units, tower mounted amplifiers and surge suppressors shall be mounted inside the streetlight pole or traffic control standard without increasing the pole diameter or shall be installed in a flush-to-grade vault enclosure adjacent to the base of the pole.

- G. Night Lighting.** Telecom Facilities shall not be lighted except for security lighting at the lowest intensity necessary for that purpose or as may be recommended by the U.S. Flag Code. Such lighting shall be shielded so that direct illumination does not directly shine on nearby properties. The review authority shall consult with the Police Department regarding proposed security lighting for Telecom Facilities on a case-by-case basis.
- H. Signs and Advertising.** No advertising signage or identifying logos shall be displayed on any Telecom Facility except for small identification, address, warning, and similar information plates. Such information plates shall be identified in the telecom application and shall be subject to approval by the review authority. Signage required by state or federal regulations shall be allowed in its smallest permissible size.
- I. Nonconformities.** A proposed Telecom Facility shall not create any new or increased nonconformity as defined in the Zoning Code, such as, but not limited to, a reduction in and/or elimination of, required parking, landscaping, or loading zones unless relief is sought pursuant to applicable Zoning Code procedures.
- J. Maintenance.** The Telecom Operator shall be responsible for maintenance of the Telecom Facility in a manner consistent with the original approval of the Telecom Facility, including but not limited to the following:
1. Any missing, discolored, or damaged screening shall be restored to its original permitted condition.
  2. All graffiti on any components of the Telecom Facility shall be removed promptly in accordance the Newport Beach Municipal Code.
  3. All landscaping required for the Telecom Facility shall be maintained in a healthy condition at all times, and shall be promptly replaced if dead or dying.
  4. All Telecom Facilities shall be kept clean and free of litter.
  5. All equipment cabinets shall display a legible contact number for reporting maintenance problems to the Facility Operator.
  6. If a flagpole is used for a Telecom Facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag shall comply with the provisions of the U.S. Flag Code (4 U.S.C. § 1 *et seq.*).

#### **20.49.070 – Permit Review Procedures.**

- A. Application Procedures.** Applications for Telecom Facilities shall be subject to Chapters 20.50, 20.52, and 20.54 unless otherwise modified by this Section.

- B. Permit Required.** All Telecom Facilities shall obtain a MUP, CUP, LTP, or ZC if not prohibited by subsection 20.49.050.B, depending on the Antenna Class and location, as specified in the Table 4-1:

**Table 4-1**

**Permit Requirements for Telecom Facilities**

Location of Proposed Telecom Facility	Antenna Class and Permit Requirement				
	Class 1 (a)	Class 2 (a) (b)	Class 3 (a) (b)	Class 4 (a) (b)	Class 5 (a)
Facility located in any Zoning District, Planned Community, or Specific Plan within 150 feet of any Residential District or their equivalent residential land use designation within a Planned Community District or Specific Plan.	ZC	MUP	MUP	MUP	LTP
Facility not located in the area identified in Subsection 1 but located in or within 150 feet of Open Space Districts (OS), Public Facilities Districts (PF), Parks and Recreation Districts (PR), or their equivalent land use designations within a Planned Community District or Specific Plan.	ZC	MUP	MUP	CUP	LTP
Facility not located in the other areas identified	ZC	CUP	MUP	CUP	LTP

(a) Any application for a Telecom Facility that proposes to exceed the base height limit of the applicable zoning district in which the Telecom Facility is located shall require review and action of a CUP by the Planning Commission.

(b) DAS installed on an existing streetlight pole, existing utility pole or other existing structure may be allowed subject to issuance of a Zoning Clearance (ZC) when the Director determines the Facility complies with the screening requirements.

- C. Application Submission Requirements for Telecom Facilities on City-owned or City-held Trust Properties.** Prior to the submittal for any application for any Telecom Facility located on any City-owned property or City-held trust property, the applicant shall first obtain written authorization from the City Manager or its designee to submit an application.

- D. Fee.** All costs associated with the permit application review shall be the responsibility of the applicant, including any expense incurred for any outside technical or legal services in connection with the application.



- E. Review Process.** Review of applications for all Telecom Facilities in City shall be consistent with Chapter 20.50 (Permit Application Filing and Processing), and the FCC Declaratory Ruling FCC 09-99 (“Shot Clock”) deadlines.
- F. Review of Collocated Facilities.** Notwithstanding any provision of this Chapter to the contrary, pursuant to California Government Code section 65850.6 (as amended or superseded), the addition of a new Telecom Facility to an existing Telecom Facility resulting in the establishment of a Collocated Telecom Facility shall be allowed without a discretionary review provided it meets section 20.49.100. If such a Collocated Telecom Facility does not satisfy all of the requirements of Government Code section 65850.6 and Section 20.49.100, the facility shall be reviewed pursuant the review procedures provided in Table 4-1.
- G. Emergency Communications Review.** At the time an application is submitted to the Community Development Department, a copy of the Plans, Map, and Emission Standards shall be sent to the Chief of the Newport Beach Police Department. The Police Department or its designee shall review the plan’s potential conflict with emergency communications. The review may include a pre-installation test of the Telecom Facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that the Telecom Facility will interfere with emergency communications devices, the applicant shall work with the Police Department to avoid interference.
- H. Public Notice and Public Hearing Requirements.** An application for a MUP, CUP or LTP shall require a public notice, and a public hearing shall be conducted, in compliance with Chapter 20.62 (Public Hearings).
- I. Required Findings for Telecom Facilities.** The following findings shall apply to all Telecom Facilities requiring discretionary review:
1. General. The review authority may approve or conditionally approve an application for a Telecom Facility only after first finding each of the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits), and each of the following:
    - a. The proposed Telecom Facility is visually compatible with the surrounding neighborhood.
    - b. The proposed Telecom Facility complies with the technology, height, location and design standards, as provided for in this Chapter.
    - c. An alternative site(s) located further from a Residential District, Public Park or Public Facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.

- d. An alternative Antenna construction plan that would result in a higher priority Antenna Class category for the proposed Telecom Facility is not available or reasonably Feasible and desirable under the circumstances.
- 2. Findings to Increase Height. The review authority may approve, or conditionally approve an application for a Telecom Facility which includes a request to exceed the base height limit for the zoning district in which the Telecom Facility is located only after making each of the following findings in addition to the required findings above, as well the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits):
  - a. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed Telecom Facility and existing adjacent developments or public spaces.
  - b. Establishment of the Telecom Facility at the requested height is necessary to provide service.

**20.49.080 – Permit Implementation, Time Limits, Extensions, and Appeals.**

- A. The process for implementation or “exercising” of permits issued for a Telecom Facility, time limits, and extensions, shall be in accordance with Chapter 20.54 (Permit Implementation, Time Limits, and Extensions).
- B. Appeals. Any appeal of the decision of the review authority of an application for a Telecom Facility shall be processed in compliance with Chapter 20.64 (Appeals).

**20.49.090 – Agreement for Use of City-Owned or City-Held Trust Property.**

When applying for a permit pursuant to this Chapter, all Telecom Facilities located on City-owned or City-held trust property shall require a license agreement approved as to form by the City Attorney, and as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager, consistent with provisions in the City Council Policy Manual.

Prior to entering into an agreement, the applicant shall obtain a MUP, CUP, LTP or ZC. Upon the issuance of a MUP, CUP, LTP or ZC, as required, and upon entering into an agreement, the applicant shall obtain any and all necessary ministerial permits, including, encroachment permits for work to be completed in the public right-of-way, and building permits, etc. All costs of said permits shall be at the sole and complete responsibility of the applicant. All work shall be performed in accordance with the applicable City standards and requirements.

#### **20.49.100 – Modification of Existing Telecom Facilities.**

Notwithstanding any provision in this Chapter of the Zoning Code, a request to modify an existing Facility that involves the Collocation of new transmission equipment, the removal of existing transmission equipment, or the replacement of existing transmission equipment shall be subject to a ministerial review and approval of a ZC without the processing of any discretionary permit provided that such modification does not substantially change the existing Facility from the original permit for the Facility. A substantial change means a single change, or series of changes over time that exceeds five percent (5%) of the physical dimension of the Telecom Facility approved as part of the original discretionary permit.

Each application submitted under this section for a modification to an existing Telecom Facility shall be accompanied by:

1. A detailed description of the proposed modifications to the existing Telecom Facility(ies);
2. A photograph or description of the Telecom Facility as originally constructed, if available; a current photograph of the existing Telecom Facility; and, a graphic depiction of the Telecom Facility after modification showing all relevant dimensions;
3. A detailed description of all construction that will be performed in connection with the proposed modification; and
4. A written statement signed and stamped by a professional engineer, licensed and qualified in California, attesting that the proposed modifications do not constitute a substantial change of the existing permitted facility.

Any permit issued will be conditioned, and may be revoked, and the Telecom Facility shall be required to be removed or restored to its pre-modification condition if:

- a. Any material statement made with respect to the Telecom Facility is false; or
- b. The modifications as actually made would have triggered a discretionary review.

#### **20.49.110 – Operational and Radio Frequency Compliance and Emissions Report.**

At all times, the operator shall ensure that its Telecom Facilities shall comply with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. Said information shall be made available by the operator upon request at the discretion of the Community Development Director.

Within thirty (30) days after installation of a Telecom Facility, a radio frequency (RF) compliance and emissions report prepared by a qualified RF engineer acceptable to the City shall be

submitted in order to demonstrate that the Telecom Facility is operating at the approved frequency and complies with FCC standards for radio frequency emissions safety as defined in 47 C.F.R. § 1.1307 *et seq.* Such report shall be based on actual field transmission measurements of the Telecom Facility operating at its maximum effective radiated power level, rather than on estimations or computer projections. If the report shows that the Telecom Facility does not comply with the FCC's 'General Population/Uncontrolled Exposure' standard as defined in 47 C.F.R. § 1.1310 Note 2 to Table 1, the Director shall require that use of the Telecom Facility be suspended until a new report has been submitted confirming such compliance.

Upon any proposed increase of at least ten percent (10%) in the effective radiated power or any proposed change in frequency use of the Telecom Facility by the Telecom Operator, the Telecom Operator shall be required to provide an updated, certified radio frequency (RF) compliance and RF emissions safety report.

A qualified independent radio frequency engineer selected and under contract to the City, may be retained to review said certifications for compliance with FCC regulations. All costs associated with the City's review of these certifications shall be the responsibility of the permittee, which shall promptly reimburse City for the cost of the review.

#### **20.49.120 – Right to Review or Revoke Permit.**

The reservation of right to review any permit for a Telecom Facility granted by the City is in addition to, and not in lieu of, the right of the City to review and revoke or modify any permit granted or approved hereunder for any violations of the conditions imposed on such permit.

#### **20.49.130 – Removal of Telecom Facilities.**

**A. Discontinued Use.** Any Telecom Operator who intends to abandon or discontinue use of a Telecom Facility must notify the Community Development Director by certified mail no less than thirty (30) days prior to such abandonment or discontinuance of use. The Telecom Operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable additional time as may be approved by the Community Development Director, within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility.
2. Transfer the rights to use the Telecom Facility to another Telecom Operator and the Telecom Operator immediately commences use within a reasonable period of time as determined by the Community Development Director.
3. Remove the Telecom Facility and restore the site.

**B. Abandonment.** Any Telecom Facility that is not operated for transmission and/or reception for a continuous period of ninety (90) days or whose Telecom Operator did not remove the Telecom Facility in accordance with Subsection A shall be deemed abandoned. Upon a

finding of abandonment, the City shall provide notice to the Telecom Operator last known to use such Facility and, if applicable, the owner of the affected real property, providing thirty days from the date of the notice within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility.
2. Transfer the rights to use the Telecom Facility to another Telecom Operator who has agreed to reactivate the Telecom Facility within 30 days of the transfer.
3. Remove the Telecom Facility and restore the site.

**C. Removal by City.**

1. The City may remove an abandoned Telecom Facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes at any time after thirty (30) days following the notice of abandonment.
2. If the City removes an abandoned Telecom Facility, the City may, but shall not be required to, store the removed Telecom Facility or any part thereof. The owner of the premises upon which the abandoned Telecom Facility was located and all prior operators of the Telecom Facility shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. In addition, the City Council, at its option, may utilize any financial security required in conjunction with granting the telecom permit as reimbursement for such costs. Also, in lieu of storing the removed Telecom Facility, the City may convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

**D. City Lien on Property.** Until the cost of removal, repair, restoration, and storage is paid in full, a lien shall be placed on the abandoned personal property and any real property on which the Telecom Facility was located for the full amount of the cost of removal, repair, restoration and storage. The City Clerk shall cause the lien to be recorded with the Orange County Recorder, with the costs of filing, processing, and release of such City Lien being added to the other costs listed in this subsection.

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## ATTACHMENT PC 2

### Comment Letters

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July 19, 2012

**VIA ELECTRONIC MAIL**

Newport Beach Planning Commission  
c/o Janet Johnson Brown, Associate Planner  
City of Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92663  
jbrown@newportbeachca.gov

Re: Proposed Amendments to Wireless Telecommunications Facilities Ordinance

Dear Ms. Brown,

PCIA—The Wireless Infrastructure Association (“PCIA”)<sup>1</sup> and the California Wireless Association (“CalWA”)<sup>2</sup> writes to provide comment on the City of Newport Beach’s proposed amendment to the Newport Beach Municipal Code to update regulations regarding wireless telecommunications facilities in light of the scheduled public hearing on the matter before the Planning Commission on Thursday, July 19, 2012. Attached please find the proposed amendments marked with comments. PCIA and CalWA respectfully request that Planning Commission defer action on this item until the industry has had an opportunity to sit down with staff and discuss the concerns reflected within this letter and in the attached mark-up.

PCIA and CalWA applaud the City of Newport Beach for recognizing that there have been numerous changes in Federal and State law regarding local regulation of wireless facilities, as well as a tremendous increase in the demand for wireless services that required the industry to change how it responds and keeps up with demand from its subscribers, especially in sophisticated communities like Newport Beach. We encourage the City to craft an ordinance that enables logical and intelligent deployment with an objective set of standards that comply with state and federal law and allows the timely provision of quality wireless service. To this end, in order to ensure that Newport Beach’s efforts to modernize its wireless ordinance are as comprehensive as possible, PCIA and CalWA offer the attached mark-up of the draft amendments.

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<sup>1</sup>PCIA is the national trade association representing the wireless infrastructure industry. PCIA’s members develop, own, manage, and operate towers, rooftop wireless sites, and other facilities for the provision of all types of wireless, broadcasting and telecommunications services. With a mandate to facilitate the deployment of wireless infrastructure, PCIA and its members partner with communities across the nation to effect solutions for wireless infrastructure deployment that are responsive to the unique sensitivities and concerns of these communities.

<sup>2</sup>CalWA is a non-profit organization made up of volunteers who work in the wireless/telecommunications industry throughout California. Its goal is to raise awareness about the benefits of and to promote the wireless industry, to educate the public and political leaders on issues of importance to the wireless industry, and to cultivate working relationships within and between the industry, the public and political leaders.



Despite the importance of wireless services and its potential for job creation, local review of the placement of wireless facilities remains a persistent barrier to the deployment of wireless infrastructure. For example, the proposed amendments to Newport Beach's Municipal Code could better facilitate the deployment of wireless infrastructure in order to bring wireless service to Newport Beach's residents. PCIA and CalWA hope to work together with the Planning Commission to find a solution for wireless infrastructure deployment that is responsive to the City of Newport Beach's needs and concerns. For this reason, PCIA and CalWA urge that Planning Commission defer action on this item to allow time to consider and discuss the industry's concerns.

### **The Need for Wireless Infrastructure**

Wireless services, from basic voice communication to mobile broadband, enable communication, productivity, mobility, and public safety. Wireless infrastructure is the backbone of wireless networks; without it, wireless services cannot be delivered to users. Wireless infrastructure enables use of spectrum by providing the vital link between the end-user and the network. The strategic deployment of wireless infrastructure improves the efficient use of limited spectrum resources, which in turn improves the performance of wireless services.

Wireless providers are currently undertaking a multi-faceted effort to deliver next-generation wireless services, such as 4G LTE, in addition to ensuring that current and next-generation networks have the capacity to handle the surge in traffic that comes with the increased adoption rates of smartphones, tablets and other data devices. Wireless networks must adapt to growing capacity demands due to an 1,800 percent increase in traffic on U.S. wireless networks in the last four years<sup>3</sup> and a projected growth of eighteen times current levels of mobile data traffic in the next five years.<sup>4</sup> Mobile Internet users are projected to outnumber wireline Internet users by 2015, when a majority of Americans will utilize a wireless device as their primary internet access tool.<sup>5</sup> This will result in two billion networked mobile devices by 2015.<sup>6</sup>

The need for rapid deployment extends beyond mere consumer convenience. More than 70 percent of all emergency calls are placed using a wireless device.<sup>7</sup> The ability to access fire, rescue and police services may be significantly hindered without wireless infrastructure, especially for those relying on wireless as their sole form of voice communications. As noted by the Federal Communications Commission ("FCC"),

[T]he deployment of facilities without unreasonable delay is vital to promote public safety, including the availability of wireless 911, throughout the nation. The importance of wireless communications for public safety is critical, especially as consumers

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<sup>3</sup> Mobile Future, 2011 Mobile Year In Review (Dec. 2011), *available at* <http://mobilefuture.org/page/-/images/2011-MYIR.pdf>.

<sup>4</sup> Quentin Hardy, The Explosion of Mobile Video, N.Y. Times, Feb. 14, 2012, *available at* <http://bits.blogs.nytimes.com/2012/02/14/the-explosion-of-mobile-video/>.

<sup>5</sup> Hayley Tsukayama, IDC: Mobile Internet Users to Outnumber Wireline Users by 2015, Washington Post, Sept. 12, 2011, *available at* [http://www.washingtonpost.com/blogs/post-tech/post/idc-mobile-internet-users-to-outnumber-wireline-users-by-2015/2011/09/12/gIAkZP7MK\\_blog.html?wprss=post-tech](http://www.washingtonpost.com/blogs/post-tech/post/idc-mobile-internet-users-to-outnumber-wireline-users-by-2015/2011/09/12/gIAkZP7MK_blog.html?wprss=post-tech).

<sup>6</sup> Mobile Future, 2011 Mobile Year In Review.

<sup>7</sup> FCC.gov, Guide: Wireless 911 Services, *available at* <http://www.fcc.gov/guides/wireless-911-services>.



increasingly rely upon their personal wireless service devices as their primary method of communication.<sup>8</sup>

As NENA observes:

Calls must be able to be made from as many locations as possible and dropped calls must be prevented. This is especially true for wireless 9-1-1 calls which must get through to the right Public Safety Answering Point (“PSAP”) and must be as accurate as technically possible to ensure an effective response. Increased availability and reliability of commercial and public safety wireless service, along with improved 9-1-1 location accuracy, all depend on the presence of sufficient wireless towers.<sup>9</sup>

For this reason, decisions on siting requests made by the personal wireless service industry were not intended by Congress to be subjected “to any but the generally applicable time frames for zoning decision[s].”<sup>10</sup> Thus, the adoption of special procedural schemes unique to wireless siting requests should be avoided.

### **The FCC Shotclock Declaratory Ruling and the California Permit Streamlining Act**

In addition to the provisions of Section 337(c)(7) of the Communications Act of 1934 referred to in the staff report, subsection (B)(ii) of that section contains another requirement that the City should keep in mind when crafting its new ordinance. That provision requires that a “local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.”

The FCC recently adopted a Declaratory Ruling on November 18, 2009 under this subsection holding that “a ‘reasonable period of time’ is, presumptively, 90 days to process personal wireless service facility siting applications requesting collocations, and, also presumptively, 150 days to process all other applications.”<sup>11</sup> Given the rate at which demand for advanced wireless services has been growing, and in particular the growth in the demand for bandwidth as a result of adoption of smart phones and wireless-enabled laptops and tablets, the need for speedy local approvals of proposed wireless deployments has become truly critical to providing the wireless services consumers demand.

Indeed, the FCC’s presumptive timeframe for action may be superfluous given that California law has, for decades, contained absolute deadlines by which action must be taken. As you are no doubt aware, the California Permit Streamlining Act imposes a 60-day time limit for approving or denying a requested permit after a project has been determined to be categorically

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<sup>8</sup> *Petition for Declaratory Ruling To Clarify Provisions of Section 332(C)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24 FCC Rcd 13994, 14021 ¶ 71 (2009) (“*Shot Clock Ruling*”), *recon. denied*, 25 FCC Rcd 11157 (2010), *aff’d*, *City of Arlington, Tex., et al. v. FCC*, 2012 U.S. App. LEXIS 1252 (5th Cir. 2012).

<sup>9</sup> *Shot Clock Ruling*, at 36.

<sup>10</sup> H.R. Conf. Rep. No. 104-458, 104th Congress, 2nd Sess. 208 (1996).

<sup>11</sup> *Shotclock Ruling*.



exempt from CEQA<sup>12</sup> or a negative declaration or mitigated negative declaration has been adopted.<sup>13</sup>

### **The Wireless Provisions in Middle Class Tax Relief and Job Creation Act of 2012**

Staff failed to mention the Middle Class Tax Relief and Job Creation Act of 2012, enacted with bipartisan support and signed into law by President Obama on February 22, 2012. One of the measures included in the Act was the creation of a nationwide interoperable broadband network for first responders. In addition to authorizing the FCC to allocate necessary spectrum for this new interoperable network, the Act also contained provisions designed to establish voluntary incentive auctions of wireless spectrum, which are expected to raise \$15 billion over the next eleven years. Seven billion dollars of the auction proceeds have been allocated for public safety broadband network build out.

The Act reflects an implicit acknowledgement that realizing the financial viability of the spectrum auctioned depends on the ease with which purchasers can deploy the infrastructure needed to utilize it. At the same time, it allays local concerns over the potential impact of the construction of new sites. In a carefully crafted attempt to address both industry and local concerns, Section 6409 of the Act streamlines, and thereby incentivizes the use of, modification of existing sites in lieu of new builds. Although the staff proposals reflect a similar recognition of the need for streamlined review of modifications, PCIA and CalWA provide herewith a detailed explanation of this recent law due to concerns that the definitions provided in the report fail to reflect those adopted and utilized by the FCC.

Section 6409 of the Act requires state and local governments to approve an eligible facilities request for the modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. Section 6409 applies to "eligible facilities requests" for modification of existing wireless towers and base stations. The Act defines "eligible facilities request" as any request for modification of an existing wireless tower or base station that involves:

- Collocation of new transmission equipment;
- Removal of transmission equipment; or
- Replacement of transmission equipment.

Many of the terms employed in the section are concepts that were hammered out in negotiations between local government and industry representatives in an agreement that was adopted by reference in regulations promulgated by the FCC. Thus, for example, "collocation" has been defined as "the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes."<sup>14</sup>

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<sup>12</sup>Gov. Code § 65950(a)(4).

<sup>13</sup>Gov. Code § 65950(a)(3).

<sup>14</sup>Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (2001), available at 47 C.F.R. Part I, Appendix B ("Collocation Agreement"). See also *Petition for Declaratory Ruling To Clarify Provisions of Section 332(C)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24

The same agreement also addressed the issue of what constitutes a substantial change in the size of a tower:

- The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or
- The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
- The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or
- The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.<sup>15</sup>

In this agreement, a "tower" is defined as "any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities."<sup>16</sup> While the concept of a "base station" is not referenced in the agreement, the term has a long-established meaning consistently used throughout both FCC regulations and case law, namely a fixed location from which wireless signals are transmitted. For example, FCC regulations define a "base station" as "[a] station at a specified site authorized to communicate with mobile stations;" or "A land station in the land mobile service."<sup>17</sup> We urge the Planning Commission to use these well recognized definitions within its Ordinance.

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FCC Rcd 13994, 14021 1171 (2009) (*"Shot Clock Ruling"*), *recon. denied*, 25 FCC Rcd 11157 (2010), *aff'd*, City of Arlington, Tex., et al. v. FCC, 2012 U.S. App. LEXIS 1252 (5th Cir. 2012).

<sup>15</sup>Collocation Agreement, note, above.

<sup>16</sup>*Id.*

<sup>17</sup>See, e.g., 47 C.F.R. §§24.5, 90.7.



## Conclusion

Reliable wireless communications are no longer a luxury. Wireless facilities provide a platform for broadband accessibility, creating a link from the City of Newport Beach to the world through high-speed Internet access. The City of Newport Beach has an opportunity to facilitate expanded wireless coverage to its citizens, businesses, and first responders by moving forward with amending its code in consideration of the wireless infrastructure industries' suggestions provided herewith.

PCIA and CalWA hope to participate in the ordinance revision process as it develops, if Planning Commission defers action on this item to consider the industry's concerns. We appreciate your support to further our mutual goal of implementing and deploying responsible and timely wireless infrastructure to serve the City of Newport Beach, CA.

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
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**From:** Cynthia Jolly [cynthia@mobilitie.com]  
**Sent:** Wednesday, July 24, 2013 3:23 PM  
**To:** Campbell, James  
**Cc:** Chris Glass  
**Subject:** RE: Newport Beach Telecom Ordinance update  
**Attachments:** Newport Beach Draft Telecom ordinance 2013 - Mobilitie LLC  
Comments.docx

Jim,

Attached are Mobilitie's comments to the Newport Beach Draft Telecom ordinance. We welcome the opportunity to discuss if you have questions prior to the planned Planning Commission study session on August 8<sup>th</sup>.

Thank you,

**Cyndi Jolly** | Director, Network Strategy  
[cynthia@mobilitie.com](mailto:cynthia@mobilitie.com)



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## Chapter 20.49 – Wireless Telecommunications Facilities

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### Sections

20.49.010 – Purpose

20.49.020 – Effect of Chapter

#### **General Provisions**

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20.49.110 – Operational and Radio Frequency Compliance and Emissions Report

20.49.120 – Right to Review or Revoke Permit

20.49.130 – Removal of Telecom Facilities

### **20.49.010 – Purpose**

- A. The purpose of this Chapter is to provide for wireless telecommunication facilities (~~“Telecom Facilities”~~) “TELECOM FACILITY” IS DEFINED IN THE DEFINITIONS SECTION BELOW on public and private property consistent with state and federal law while ensuring public safety, reducing the visual effects of telecom equipment on public streetscapes, protecting scenic, ocean and coastal public views, and otherwise mitigating the impacts of such facilities. More specifically, the regulations contained herein are intended to; 1) encourage the location of Antennas in non-residential areas, 2) encourage Collocation at new and existing Antenna sites, and 3) encourage Telecom Facilities to be located in areas where adverse visual impacts on the community and public views are minimized.
- B. The provisions of this Chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This Chapter shall be applied to providers, operators, and maintainers of wireless services regardless of whether authorized by state or federal regulations. This Chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services.
- C. All Telecom Facilities approved under this Chapter shall utilize ~~the most efficient and least obtrusive available~~ commercially reasonable technology in order to minimize the number of Telecom Facilities in the City and reduce their visual impact on the community and public views.  
[WHAT DOES LEAST OBTRUSIVE TECHNOLOGY MEAN AND HOW CAN THIS STANDARD MINIMIZE THE NUMBER OF TELECOM FACILITIES? “MOST EFFICIENT” AND “LEAST OBTRUSIVE” REQUIREMENTS CAN CONTRADICT EACH OTHER (YOU CAN’T ALWAYS ACCOMPLISH BOTH AND WILL ELIMINATE FUTURE COLLOCATION OPPORTUNITIES).



DESIGNING A SITE FOR FUTURE COLLOCATION WILL MINIMIZE THE NUMBER OF TELECOM FACILITIES.]

**20.49.020 – Effect of Chapter**

- A. Regulatory Scope.** These regulations are applicable to all Telecom Facilities providing voice and/or data transmission such as, but not limited to, cell phone, internet and radio relay stations.
- B. Permit and/or Agreement Required.** Prior to construction of any Telecom Facility in the City, the applicant shall obtain a Minor Use Permit (MUP), Conditional Use Permit (CUP), Limited Term Permit (LTP), or Zoning Clearance (ZC), [ARE THERE CIRCUMSTANCES WHERE AN AUTHORIZATION/APPROVAL OTHER THAN THE FOREGOING IS REQUIRED? IF SO, THEN INCLUDE HERE “or other authorization or approval required under the Municipal Code,”] depending on the proposed location, and Antenna Class, and method of installation [WHAT DOES “METHOD OF INSTALLATION” MEAN? THE PERMIT TYPE WOULD BE BASED ON HOW THE TELECOM FACILITY IS ENGINEERED/DESIGNED, NOT ON HOW THE TELECOM FACILITY IS INSTALLED BY THE CONTRACTOR.], in accordance with Section 20.49.070 (Permit Review Procedures). Applicants who obtain a MUP, CUP, LTP, or ZC (and an encroachment permit, if required) for any Telecom Facility approved to be located on any City-owned property or City-held Trust property, shall enter into an agreement prepared and executed by the City Manager or its designee prior to construction of the Telecom Facility, consistent with Section 20.49.090 (Agreement for Use of City-owned or City-held Trust Property).
- C. Exempt Facilities.** The following types of facilities are exempt from the provisions of this Chapter:
1. Amateur radio antennas and receiving satellite dish antennas, and citizen band radio antennas regulated by Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities).
  2. Dish and other antennas subject to the FCC Over-the-Air Reception Devices (“OTARD”) rule, 47 C.F.R. § 1.4000 that are designed and used to receive video programming signals from (a) direct broadcast satellite services, or (b) television broadcast stations, or (c) for wireless cable service.
  3. During an emergency, as defined by Title 2 of the NBMC, the City Manager, Director of Emergency Services or Assistant Director of Emergency Services shall have the authority to approve the placement of a Telecom Facility in any district on a temporary basis not exceeding ninety (90) calendar days from the date of authorization. Such authorization may be extended by the City on a showing of good cause.
  4. Facilities exempt from some or all of the provisions of this Chapter by operation of state or federal law to the extent so determined by the City.

5. Systems installed or operated at the direction of the City or its contractor.
6. Systems installed entirely within buildings for the sole purpose of providing wireless telecommunications services or data transmission services to building occupants.

**D. Other Regulations.** Notwithstanding the provisions of this Chapter, all Telecom Facilities within the City shall comply with the following requirements:

1. Rules, regulations, ~~policies,~~ or conditions in any permit, license, or agreement issued by a local, state or federal agency which has jurisdiction over the Telecom Facility.
2. Rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).

**E. Regulations not in Conflict or Preempted.** All Telecom Facilities within the City shall comply with the following requirements unless in conflict with or preempted by the provisions of this Chapter or any other provision of the Municipal Code:

1. **All applicable** City design guidelines and standards. [HOW DO WE KNOW WHICH GUIDELINES AND STANDARDS ARE APPLICABLE? TOO BROAD.]
2. Requirements established by any other provision of the Municipal Code and by any other ordinance and regulation of the City.

**F. Legal Nonconforming Telecom Facility.** Any Telecom Facility that is lawfully constructed, erected, or approved pursuant to an application that was complete prior to the effective date of this Chapter that does not conform to the requirements of this Chapter but is otherwise operating in compliance with all applicable laws, ~~and which Facility does not conform to the requirements of this Chapter~~ shall be accepted and allowed as a legal nonconforming Telecom Facility ~~if otherwise approved and constructed~~. Legal nonconforming Telecom Facilities shall comply at all times with the laws, ordinances, and regulations in effect at the time the application was deemed complete, ~~and any applicable federal and state laws as they may be amended or enacted,~~ and shall at all times comply with any conditions of approval authorized under the Municipal Code.

#### **20.49.030 – Definitions.**

For the purposes of this Chapter, the following definitions shall apply:

- A. Antenna.** Antenna means a device used to transmit and/or receive radio or electromagnetic waves between earth and/or satellite-based systems, such as reflecting discs, panels, microwave dishes, whip antennas, ~~Antennas,~~ arrays, or other similar antennas or devices.
- B. Antenna Array.** Antenna Array means Antennas having transmission and/or reception elements extending in more than one direction, and directional Antennas mounted upon

and rotated through a vertical mast or tower interconnecting the beam and Antenna support, all of which elements are deemed to be part of the Antenna.

**C. Antenna Classes.** Antenna Classes are Telecom Facilities and the attendant Support Equipment separated into the following distinct classes:

1. Class 1 (Stealth/Screened): a Telecom Facility with Antennas mounted on an existing or proposed non-residential building or other structure not primarily intended to be an antenna support structure where Antennas and Support Equipment, including the base station, are ~~fully~~-screened so that they are not visible to the general public.
2. Class 2 (Visible): a Telecom Facility that does not fall into Class 1 with Antennas mounted on an existing non-residential building, structure, pole, light standard, Utility Tower, Wireless Tower and/or Lattice Tower.
3. Class 3 (Public Right-of-Way Installations): a Telecom Facility that does not fall into Class 1 or 2 with Antennas installed on an existing or proposed structure located in the public right-of-way.
4. Class 4 (Freestanding Structure): a Telecom Facility that does not fall into Class 1, 2 or 3 with Antennas mounted on a new freestanding structure constructed for the sole or primary purpose of supporting the Telecom Facility.
5. Class 5 (Temporary): a Telecom Facility that may fall into Class 1, 2, 3 or 4 including with associated Support Equipment that is installed at a site on a temporary basis pursuant to a Limited Term Permit. A Class 5 installation may also be installed in connection with a special event upon the approval of a Special Events Permit pursuant to Chapter 11.03 without a Limited Term Permit.

**D. Base Station.** Base Station means the electronic equipment at a Telecom Facility installed and operated by the Telecom Operator that together perform the initial signal transmission and signal control functions. Base Station does not include the Antennas and Antenna support structure, or the Support Equipment, nor does it include any portion of DAS.

**E. City-owned or City-held Trust Property.** City-owned or City-held Trust Property means all real property and improvements owned, operated or controlled by the City, other than the public right-of-way, within the City's jurisdiction, including but is not limited to City Hall, Police and Fire facilities, recreational facilities, parks, libraries, monuments, signs, streetlights and traffic control standards.

**F. Collocation.** Collocation means an arrangement whereby ~~multiple~~ Telecom Facilities are installed for more than one wireless service provider or operator on the same building or structure.

**G. Distributed Antenna System, DAS.** Distributed Antenna System (DAS) means a network of one or more Antennas and fiber optic nodes typically mounted to streetlight poles, or utility

structures, which provide access and signal transfer services to one or more third-party wireless service providers. DAS also includes the equipment location, sometimes called a “hub” or “hotel” where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services.

- H. **FCC.** FCC means the Federal Communications Commission, the federal regulatory agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.
- I. **Feasible.** Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, engineering, structural, legal and technological factors.
- J. **Lattice Tower.** Lattice Tower means a freestanding open framework structure used to support Antennas, typically with three or four support legs of open metal crossbeams or crossbars.
- K. **Monopole.** Monopole means a single free-standing pole or pole-based structure solely used to act as or support a Telecom Antenna or Antenna Arrays.
- L. **Operator or Telecom Operator.** Operator or Telecom Operator means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a Telecom Facility ~~or facilities~~ within the City. [DIFFERENTIATE BETWEEN OPERATOR OF THE TELECOM FACILITY AND THE TELECOM OPERATOR (TELECOM FACILITY OWNER VS. TELECOM FACILITY TENANT/CARRIER)].

TELECOM FACILITY OWNER OPERATES AND MAINTAINS THE TELECOM FACILITY, BUT THE TELECOM FACILITY TENANT/CARRIER (WHO LEASE FROM TELECOM FACILITY OWNERS) MAY HOLD A SEPARATE PERMIT FOR THEIR EQUIPMENT AND ARE RESPONSIBLE FOR COMPLIANCE WITH THE FCC AND WOULD SUPPLY THE RF EMISSION SAFETY REPORTS (REFERENCE SECTION 20.49.110).

NOTE: TELECOM FACILITY OWNERS GENERALLY REQUIRE IN THEIR CARRIER AGREEMENTS THAT THESE ARE COMPLIED WITH.]

- ~~M. **Public Right of Way.** Public Right of Way or (“PROW”) means the improved or unimproved surface of any street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. PROW includes public streets, roads, lanes, alleys, sidewalks, medians, parkways and landscaped lots. [PROW IS DEFINED IN TITLE 13.]~~

- ~~N.M.~~ **Stealth or Stealth Telecom Facility.** Stealth or Stealth Telecom Facility means a Telecom Facility in which the Antenna, and the Support Equipment, are completely hidden from view in a monument, cupola, pole-based structure, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures

which are obviously not such a natural or architectural feature to the average observer do not qualify within this definition. A false tree is not a Stealth [Telecom](#) Facility.

**P.N. Support Equipment.** Support Equipment means the physical, electrical and/or electronic equipment included within a Telecom Facility used to house, power, and/or contribute to the processing of signals from or to the [Telecom](#) Facility's Antenna or Antennas, including but not limited to a base station, cabling, air conditioning units, equipment cabinets, pedestals, and electric service meters. Support Equipment does not include DAS, Antennas or the building or structure to which the Antennas or other equipment are attached.

**P.O. Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, ~~or Facility~~ [\[FACILITY IS DEFINED IN TITLE 13\]](#).** Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, or Wireless Telecommunications Facility, ~~or simply Facility or Facilities~~ means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, ~~and the land or structure on which they are all situated~~. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.

**Q.P. Utility Pole.** Utility Pole means a single freestanding pole used to support services provided by a public or private utility provider.

**R.Q. Utility Tower.** Utility Tower shall mean an open framework structure (see lattice tower) or steel pole used to support electric transmission facilities.

**S.R. Wireless Tower.** Wireless Tower means any structure built for the sole or primary purpose of supporting Antennas used to provide wireless services authorized by the FCC. A Distributed Antenna System (DAS) installed ~~pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission~~ on a water tower, utility tower, **street light**, or other structures built or rebuilt or replaced primarily for a purpose other than supporting wireless services authorized by the FCC, including any structure installed pursuant to California Public Utility Code Section 7901, is not a Wireless Tower for purposes of this definition. For an example only, a prior-existing light standard which is replaced with a new light standard to permit the addition of Antennas shall not be considered a Wireless Tower, but rather a replacement light standard. [\[REFERENCE 20.49.050 \(B\)\(4\) BELOW.\]](#)

## **20.49.050 – Location Preferences.**

**A. Preferred Locations.** To limit the adverse visual effects of and proliferation of new or individual Telecom Facilities in the City, the following list establishes the order of preference

for the location and installation of Telecom Facilities, from highest priority location and technique to lowest.

1. Collocation ~~of a new facility at an existing facility.~~

2. Class 1.

3. Class 2.

4. Class 3.

5. Class 4.

6. Class 5.

**B. Prohibited Locations.** Telecom Facilities are prohibited in the following locations to the extent such prohibitions are not inconsistent with federal and state law:

1. On properties zoned for single-unit or two-unit residential development, including equivalent PC District designation.

2. On properties zoned for multi-unit residential development and mixed-use development where the maximum allowable number of dwelling units is four (4) units.

3. In the Open Space (OS) zoning district, **unless** Telecom Facilities are collocated on an existing Utility Tower within a utility easement area, or collocated on an existing Telecom Facility. [CAN AN EXISTING TELECOM FACILITY IN THE OS ZONING DISTRICT BE MODIFIED FOR COLLOCATION IF THE CURRENT DESIGN IS INADEQUATE (I.E. INCREASE STRUCTURE HEIGHT AND/OR GROUND SPACE)?]

~~4. On streetlights.~~

[THE DEFINITION OF WIRELESS TOWER INCLUDES STREET LIGHTS AND IS REFERENCED IN CLASS 3 OF PREFERRED LOCATIONS, BUT ARE LISTED HERE AS A PROHIBITED LOCATION.]

**C. Installations in the Public Right-of-Way.** All Telecom Facilities proposed to be located in the public right-of way shall comply with the provisions of Title 13. Antenna installations on an existing or replacement streetlight pole shall be compatible in design, scale, and proportion to streetlights and the pole on which they are mounted.

**D. Collocation Installations.** A new Telecom Facility proposed within one thousand (1,000) feet of an existing Telecom Facility shall be required to collocate on the same building or structure as the existing Telecom Facility.

1. Exception: If the ~~reviewing authority~~City determines, based on ~~compelling sufficient~~ evidence submitted by the applicant, that Collocation of one or more new Telecom

Facilities within one thousand (1,000) feet of an existing Telecom Facility is not Feasible, then such Collocation shall not be required.

2. Condition Requiring Future Collocation. In approving a Telecom Facility, the ~~review authority~~City may impose a condition of approval providing for future Collocation of Telecom Facilities by other carriers at the same site. [HOW WOULD THIS CONDITION BE WORDED?]

#### 20.49.060 – General Development and Design Standards.

- A. **General Criteria.** ~~All Telecom Facilities shall employ design techniques to minimize visual impacts and provide appropriate screening to result in the least intrusive means of providing the service. Such techniques shall be employed to make the installation, appearance and operations of the Telecom Facility as visually inconspicuous as possible. [REDUNDANT - SEE COMMENT IN 20.49.010(A) ABOVE]~~ To the greatest extent Feasible, and depending on where its located, Telecom Facilities shall be designed to minimize the visual impact of the Telecom Facility by means of location, placement, height, screening, landscaping, and shall be compatible with existing architectural elements, building materials, other building characteristics, and the surrounding area.

In addition to the other design standards of this Section, the following criteria shall be considered by the review authority in connection with its processing of any MUP, CUP, LTP, or ZC for a Telecom Facility to the extent Feasible:

1. Blending. The extent to which the proposed Telecom Facility blends into the surrounding environment or is architecturally compatible and integrated into the structure.
2. Screening. The extent to which the proposed Telecom Facility is concealed or screened by existing or proposed new topography, vegetation, buildings or other structures.
3. Size. The total size of the proposed Telecom Facility, particularly in relation to surrounding and supporting structures.
4. Location. Proposed Telecom Facilities shall be located so as to utilize existing natural or man-made features in the vicinity of the Telecom Facility, including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening and blending with the predominant visual backdrop.

- B. **Public View Protection.** Telecom Facilities involving a site adjacent to an identified public view point ~~or corridor~~, as identified in General Plan Policy NR 20.3 (Public Views), shall be reviewed to evaluate the potential impact to public views consistent with Section 20.30.100 (Public View Protection). [A BETTER DEFINITION AND DEPICTION FOR CORRIDOR IS NEEDED (I.E. "SCENIC CORRIDOR SHALL BE ESTABLISHED ON A MAP")].

- C. **Height.**

1. Telecom Facilities installed on buildings or other structures shall comply with the base height limit established in Part 2 (Zoning Districts, Allowable Uses, and Zoning District Standards) for the zoning district in which the Telecom Facility is located.
  2. Applications for the installation of Telecom Facilities proposed to be greater than the base height limit for the zoning district in which the Telecom Facility is located shall be subject to review and action by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP for a Telecom Facility to exceed the base height limit after making all of the required findings in Section 20.49.070. ~~I~~<sup>H</sup> (Permit Review Procedures).
  3. All Telecom Facilities shall comply with Antenna height restrictions, if any, required by the Federal Aviation Administration, and shall comply with Section 20.30.060.E. (Airport Environs Land Use Plan (AELUP) for John Wayne Airport and Airport Land Use Commission (ALUC) Review Requirements) as may be in force at the time the Telecom Facility is permitted or modified.
  4. ~~Antennas shall be installed at the minimum height possible to provide average service to the Telecom Operator's proposed service area. In any case, n~~To the extent permitted by federal and state law, no Antenna or other telecom equipment or screening structure shall extend higher than the following maximum height limits: [AVERAGE SERVICE TO PROPOSED AREA IS UNACCEPTABLE.]
    - a. Telecom Facilities installed on streetlight standards, Utility Poles, Utility Towers or other similar structures within the public right-of-way shall not exceed 35 feet in height above the finished grade.
    - b. Telecom Facilities may be installed on existing Utility Poles or Utility Towers that exceed 35 feet above the finished grade where the purposes of the existing Utility Pole or Utility Tower is to carry electricity or provide other wireless data transmission provided that the top of the Antenna does not extend above the top of the Utility Pole or Utility Tower.
    - c. Telecom Facilities installed in ground-mounted flagpoles may be installed at a maximum height of 35 feet.
- D. Setbacks.** Proposed Telecom Facilities shall comply with the required setback established by the development standards for the zoning district in which the Telecom Facility is proposed to be located. Setbacks shall be measured from the part of the Telecom Facility closest to the applicable lot line or structure.
- E. Design Techniques.** Design techniques shall result in the installation of a Telecom Facility that is in scale with the surrounding area, hides the installation from predominant views from surrounding properties, and prevents the Telecom Facility from visually dominating the surrounding area. Design techniques may include the following:



1. Screening elements to disguise, or otherwise hide the Telecom Facility from view from surrounding uses.
2. Painting and/or coloring the Telecom Facility to blend into the predominant visual backdrop.
3. Siting the Telecom Facility to utilize existing features (buildings, topography, vegetation, etc.) to screen or hide the Telecom Facility.
4. Utilizing simulated natural features (trees, rocks, etc.) to screen or hide the Telecom Facility.

~~5. Providing Telecom Facilities of a size that, as determined by the City, is not visually obtrusive such that any effort to screen the Telecom Facility would create greater visual impacts than the Telecom Facility itself.~~

**F. Screening Standards.** For Collocation installations, the screening method shall be materially similar to those used on the existing Telecom Facility, and shall not diminish the screening of the Telecom Facility. If determined necessary by the review authority, use of other improved and appropriate screening methods may be required to screen the Antennas and Support Equipment from public view. The Following is a non-exclusive list of potential design and screening techniques that should be considered:

1. For Class 1 (Stealth/Screened) Antenna Installations:
  - a. All Telecom Facility components, including all Antenna panels and Support Equipment, shall be fully screened, and mounted either inside the building or structure, or behind the proposed screening elements and not on the exterior face of the building or structure.
  - b. Screening materials shall match in color, size, proportion, style, and quality with the exterior design and architectural character of the structure and the surrounding visual environment. If determined necessary by the reviewing authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
  - c. In conditions where the Antennas and Support Equipment are installed within a new freestanding structure, (an architectural feature such as a steeple, religious symbol or tower, cupola, clock tower, sign, etc.), the installation shall blend in the predominant visual backdrop so it appears to be a decorative and attractive architectural feature.
2. For Class 2 (Visible) Antenna Installations:
  - a. Building or structure mounted Antennas shall be painted or otherwise coated to match or complement the predominant color of the structure on which they are

mounted and shall be compatible with the architectural texture and materials of the building to which the Antennas are mounted. ~~No cables and mounting brackets or any other associated equipment or wires shall be visible from above, below or the side of the Antennas.~~

- b. All Antenna components and Support Equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.

3. For Class 3 (Public Right-of-Way) Antenna Installations:

- a. Whenever Feasible, new Antennas proposed to be installed in the public right-of-way shall be placed on existing or replacement utility structures, light standards, or other existing vertical structures. Antenna installations on existing or replacement **streetlight** poles, traffic control standards, or Utility Poles shall be screened by means of canisters, radomes, shrouds other screening measures whenever Feasible, and treated with exterior coatings of a color and texture to match the existing pole. [\[REFERENCE 20.49.050 \(B\)\(4\) ABOVE.\]](#)
- b. If Antennas are proposed to be installed without screening, they shall be flush-mounted to the pole and shall be treated with exterior coatings of a color and texture to match the existing pole.
- c. If a new pole is proposed to replace an existing pole, the replacement pole shall be consistent with the size, shape, style and design of the existing pole, including any attached light arms.

4. For Class 4 (Freestanding Structure) Antenna Installations:

- a. For a false rock, the proposed screen structure shall [reasonably](#) match in scale and color other rock outcroppings in the general vicinity of the proposed site, [provided such rock outcroppings exist.](#) ~~A false rock screen may not be considered appropriate in areas that do not have natural rock outcroppings.~~
- b. The installation of a false tree (such as but without limitation a monopine or monopalm, or false shrubbery) shall be designed for and located in a setting that is compatible with the proposed screening method. Such installations shall be situated so as to utilize existing natural or manmade features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening. For false trees or shrubbery installations, all Antennas and Antenna supports shall be contained within the canopy of the tree design, and other vegetation comparable to that replicated in the proposed screen structure shall be prevalent in the immediate vicinity of the antenna site, and the addition of new

comparable living vegetation may be necessary to enhance the false tree or shrubbery screen structure.

- c. For installations of a flagpole, the pole shall not exceed 24 inches in width at the base of the flagpole and also shall not exceed 20 inches in width at the top of the flagpole. [THIS DOESN'T WORK BECAUSE 24 INCHES IN WIDTH AT THE TOP OF THE FLAGPOLE IS REQUIRED TO INCORPORATE THE ANTENNAS AND NECESSARY MOUNTING BRACKETS/SUPPORT.]

5. For Class 5 (Temporary) Antenna Installations:

- a. A temporary Telecom Facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary by the review authority, the appropriate screening methods will be determined through the permitting process reflecting the temporary nature of the Telecom Facility.

6. Support Equipment. All Support Equipment associated with the operation of any Telecom Facility shall be placed or mounted in the least visually obtrusive location ~~possible~~Feasible, and shall be screened from view.

- a. Installations on Private Property. The following is a non-exclusive list of potential screening techniques for Telecom Facilities located on private property:

- (1) Building-Mounted Facilities. For building or structure-mounted Antenna installations, Support Equipment for the Telecom Facility may be located inside the building, in an underground vault, or on the roof of the building that the Telecom Facility is located on, provided that both the equipment and any screening materials are architecturally compatible and/or painted the color of the building, roof, and/or surroundings thereby providing screening. If placed in an underground vault, flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view may be incorporated.

- (2) Roof-Mounted Facilities. All screening materials for roof-mounted Telecom Facilities shall be of a quality and design compatible with the architecture, color, texture and materials of the building to which it is mounted. If determined necessary by the review authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.

- (3) Freestanding Facilities. For freestanding Telecom Facilities installations, not mounted on a building or structure, Support Equipment for the Telecom Facility may be visually screened by locating the Support Equipment in a fully enclosed building, in an underground vault, or in a security enclosure consisting of walls

and/or landscaping to effectively screen the Support Equipment at the time of installation.

- (4) All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings.
  - (5) Screening enclosures may utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a “closed-mesh” design (i.e. one-inch gaps) or may consist of an alternate enclosure design approved by the review authority. In general, the screening enclosure shall be made of non-reflective material and painted to blend with surrounding materials and colors.
  - (6) If placed in an underground vault, flush-to-grade vents, or alternatively, vents that extend no more than 24 inches above the finished grade and are screened from public view may be utilized.
- b. Installations in a Public Right-of-Way. The following is a non-exclusive list of potential screening techniques for Telecom Facilities located in a public right-of-way:
- (1) Where the existing utilities services (e.g., telephone, power, cable TV) are located underground, the Support Equipment shall be placed underground, consistent with Chapter 13.20. Flush-to-grade underground vault enclosures, including flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view may be incorporated. Electrical meters required for the purpose of providing power for the proposed Telecom Facility may be installed above ground on a pedestal in a public right-of-way.
  - (2) Support equipment approved to be located above ground in a public right-of-way shall be painted or otherwise coated to be visually compatible with the existing or replacement pole, lighting and/or traffic signal equipment without substantially increasing the width of the structure.
  - (3) All transmission or amplification equipment such as remote radio units, tower mounted amplifiers and surge suppressors shall be mounted inside the streetlight pole or traffic control standard without increasing the pole diameter or shall be installed in a flush-to-grade vault enclosure adjacent to the base of the pole.
- G. Night Lighting.** Telecom Facilities shall not be lighted except for security lighting at the lowest intensity necessary for that purpose or as may be recommended by the U.S. Flag Code. Such lighting shall be shielded so that direct illumination does not directly shine on nearby properties. The review authority shall consult with the Police Department regarding proposed security lighting for Telecom Facilities on a case-by-case basis.

- H. Signs and Advertising.** No advertising signage or identifying logos shall be displayed on any Telecom Facility except for small identification, address, warning, and similar information plates. Such information plates shall be identified in the telecom application and shall be subject to approval by the review authority. Signage required by state or federal regulations shall be allowed in ~~its smallest permissible size~~ accordance with the foregoing.
- I. Nonconformities.** A proposed Telecom Facility shall not create any new or increased nonconformity as defined in the Zoning Code, such as, but not limited to, a reduction in and/or elimination of, required parking, landscaping, or loading zones unless relief is sought pursuant to applicable Zoning Code procedures.
- J. Maintenance.** The Telecom Operator shall be responsible for maintenance of the Telecom Facility in a manner consistent with the original approval of the Telecom Facility, including but not limited to the following:
1. Any missing, discolored, or damaged screening shall be restored to its original permitted condition.
  2. All graffiti on any components of the Telecom Facility shall be removed promptly in accordance the Newport Beach Municipal Code.
  3. All landscaping required for the Telecom Facility shall be maintained in a healthy condition at all times, and shall be promptly replaced if dead or dying.
  4. All Telecom Facilities shall be kept clean and free of litter.
  5. All equipment cabinets shall display a legible contact number for reporting maintenance problems to the Telecom Facility Operator.
  6. If a flagpole is used for a Telecom Facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag shall comply with the provisions of the U.S. Flag Code (4 U.S.C. § 1 *et seq.*).

#### **20.49.070 – Permit Review Procedures.**

- A. Application Procedures.** Applications for Telecom Facilities shall be subject to Chapters 20.50, 20.52, and 20.54 unless otherwise modified by this Section.
- B. Permit Required.** All Telecom Facilities shall obtain a MUP, CUP, LTP, or ZC if not prohibited by subsection 20.49.050.B, depending on the Antenna Class and location, as specified in the Table 4-1:

**Table 4-1**

**Permit Requirements for Telecom Facilities**

Location of Proposed Telecom Facility	Antenna Class and Permit Requirement				
	Class 1 (a)	Class 2 (a) (b)	Class 3 (a) (b)	Class 4 (a) (b)	Class 5 (a)
<b>Telecom</b> Facility located in any Zoning District, Planned Community, or Specific Plan within 150 feet of any Residential District or their equivalent residential land use designation within a Planned Community District or Specific Plan.	ZC	MUP	MUP	MUP	LTP
<b>Telecom</b> Facility not located in the area identified in Subsection 1 but located in or within 150 feet of Open Space Districts (OS), Public Facilities Districts (PF), Parks and Recreation Districts (PR), or their equivalent land use designations within a Planned Community District or Specific Plan.	ZC	MUP	MUP	CUP	LTP
<b>Telecom</b> Facility not located in the other areas identified	ZC	CUP	MUP	CUP	LTP

(a) Any application for a Telecom Facility that proposes to exceed the base height limit of the applicable zoning district in which the Telecom Facility is located shall require review and action of a CUP by the Planning Commission.

(b) DAS installed on an existing streetlight pole, existing utility pole or other existing structure may be allowed subject to issuance of a Zoning Clearance (ZC) when the Director determines the **Telecom** Facility complies with the screening requirements.

**C. Application Submission Requirements for Telecom Facilities on City-owned or City-held Trust Properties.** Prior to the submittal for any application for any Telecom Facility located on any City-owned property or City-held trust property, the applicant shall first obtain written authorization from the City Manager or its designee to submit an application.

**D. Fee.** All costs associated with the permit application review shall be the responsibility of the applicant, including any expense incurred for any outside technical or legal services in connection with the application.

**E. Review Process.** Review of applications for all Telecom Facilities in City shall be consistent with Chapter 20.50 (Permit Application Filing and Processing), and the FCC Declaratory Ruling FCC 09-99 ("Shot Clock") deadlines.

**F. Review of Collocated **Telecom** Facilities.** Notwithstanding any provision of this Chapter to the contrary, pursuant to California Government Code section 65850.6 (as amended or

superseded), the addition of a new Telecom Facility to an existing Telecom Facility resulting in the establishment of a Collocated Telecom Facility shall be allowed without a discretionary review provided it meets section 20.49.100. If such a Collocated Telecom Facility does not satisfy all of the requirements of Government Code section 65850.6 and Section 20.49.100, the Telecom Facility shall be reviewed pursuant the review procedures provided in Table 4-1.

- G. Emergency Communications Review.** At the time an application is submitted to the Community Development Department, a copy of the Plans, Map, and Emission Standards shall be sent to the Chief of the Newport Beach Police Department. The Police Department or its designee shall review the plan's potential conflict with emergency communications. The review may include a pre-installation test of the Telecom Facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that the Telecom Facility will interfere with emergency communications devices, the applicant shall work with the Police Department to avoid interference.
- H. Public Notice and Public Hearing Requirements.** An application for a MUP, CUP or LTP shall require a public notice, and a public hearing shall be conducted, in compliance with Chapter 20.62 (Public Hearings).
- I. Required Findings for Telecom Facilities.** The following findings shall apply to all Telecom Facilities requiring discretionary review:
  - 1. General. The review authority may approve or conditionally approve an application for a Telecom Facility only after first finding each of the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits), and each of the following:
    - a. The proposed Telecom Facility is visually compatible with the surrounding neighborhood.
    - b. The proposed Telecom Facility complies with the technology, height, location and design standards, as provided for in this Chapter.
    - c. An alternative site(s) located further from a Residential District, Public Park or Public Facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.
    - d. An alternative Antenna construction plan that would result in a higher priority Antenna Class category for the proposed Telecom Facility is not available or reasonably Feasible and desirable under the circumstances.
  - 2. Findings to Increase Height. The review authority may approve, or conditionally approve an application for a Telecom Facility which includes a request to exceed the base height limit for the zoning district in which the Telecom Facility is located only after making

each of the following findings in addition to the required findings above, as well the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits):

- a. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed Telecom Facility and existing adjacent developments or public spaces.
- b. Establishment of the Telecom Facility at the requested height is necessary to provide service.

#### **20.49.080 – Permit Implementation, Time Limits, Extensions, and Appeals.**

- A. The process for implementation or “exercising” of permits issued for a Telecom Facility, time limits, and extensions, shall be in accordance with Chapter 20.54 (Permit Implementation, Time Limits, and Extensions).
- B. Appeals. Any appeal of the decision of the review authority of an application for a Telecom Facility shall be processed in compliance with Chapter 20.64 (Appeals).

#### **20.49.090 – Agreement for Use of City-Owned or City-Held Trust Property.**

When applying for a permit pursuant to this Chapter, all Telecom Facilities located on City-owned or City-held trust property shall require a license agreement approved as to form by the City Attorney, and as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager, consistent with provisions in the City Council Policy Manual.

Prior to entering into an agreement, the applicant shall obtain a MUP, CUP, LTP or ZC. Upon the issuance of a MUP, CUP, LTP or ZC, as required, and upon entering into an agreement, the applicant shall obtain any and all necessary ministerial permits, including, encroachment permits for work to be completed in the public right-of-way, and building permits, etc. All costs of said permits shall be at the sole and complete responsibility of the applicant. All work shall be performed in accordance with the applicable City standards and requirements.

#### **20.49.100 – Modification of Existing Telecom Facilities.**

Notwithstanding any provision in this Chapter of the Zoning Code, a request to modify an existing Telecom Facility that involves the Collocation of new transmission equipment, the removal of existing transmission equipment, or the replacement of existing transmission equipment shall be subject to a ministerial review and approval of a ZC without the processing of any discretionary permit provided that such modification does not substantially change the existing Telecom Facility from the original permit for the Telecom Facility. A substantial change means a single change, or series of changes over time that exceeds five percent (5%) of the physical dimension of the Telecom Facility approved as part of the original discretionary permit.



Each application submitted under this section for a modification to an existing Telecom Facility shall be accompanied by:

1. A detailed description of the proposed modifications to the existing Telecom Facility(ies);
2. A photograph or description of the Telecom Facility as originally constructed, if available; a current photograph of the existing Telecom Facility; and, a graphic depiction of the Telecom Facility after modification showing all relevant dimensions;
3. A detailed description of all construction that will be performed in connection with the proposed modification; and
4. A written statement signed and stamped by a professional engineer, licensed and qualified in California, attesting that the proposed modifications do not constitute a substantial change of the existing permitted ~~Telecom F~~facility.

Any permit issued will be conditioned, and may be revoked, and the Telecom Facility shall be required to be removed or restored to its pre-modification condition if:

- a. Any material statement made with respect to the Telecom Facility is false; or
- b. The modifications as actually made would have triggered a discretionary review.

#### **20.49.110 – Operational and Radio Frequency Compliance and Emissions Report.**

At all times, the wireless operator shall ensure that its Telecom Facilities shall comply with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The wireless operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. Said information shall be made available by the wireless operator upon request at the discretion of the Community Development Director.

Within thirty (30) days after installation of a Telecom Facility, a radio frequency (RF) compliance and emissions report prepared by a qualified RF engineer acceptable to the City shall be submitted in order to demonstrate that the Telecom Facility is operating at the approved frequency and complies with FCC standards for radio frequency emissions safety as defined in 47 C.F.R. § 1.1307 *et seq.* Such report shall be based on actual field transmission measurements of the Telecom Facility operating at its maximum effective radiated power level, rather than on estimations or computer projections. If the report shows that the Telecom Facility does not comply with the FCC's 'General Population/Uncontrolled Exposure' standard as defined in 47 C.F.R. § 1.1310 Note 2 to Table 1, the Director shall require that use of the Telecom Facility be suspended until a new report has been submitted confirming such compliance.

Upon any proposed increase of at least ten percent (10%) in the effective radiated power or any proposed change in frequency use of the Telecom Facility by the ~~Telecom O~~wireless operator,

the Telecom-wireless Operator shall be required to provide an updated, certified radio frequency (RF) compliance and RF emissions safety report. [DIFFERENTIATE BETWEEN OPERATOR OF THE TELECOM FACILITY AND THE TELECOM OPERATOR (TELECOM FACILITY OWNER VS. TELECOM FACILITY TENANT/CARRIER).]

A qualified independent radio frequency engineer selected and under contract to the City, may be retained to review said certifications for compliance with FCC regulations. All costs associated with the City's review of these certifications shall be the responsibility of the permittee, which shall promptly reimburse City for the cost of the review.

#### **20.49.120 – Right to Review or Revoke Permit.**

The reservation of right to review any permit for a Telecom Facility granted by the City is in addition to, and not in lieu of, the right of the City to review and revoke or modify any permit granted or approved hereunder for any violations beyond a reasonable cure period of the conditions imposed on such permit.

#### **20.49.130 – Removal of Telecom Facilities.**

**A. Discontinued Use.** Any Telecom Operator who intends to abandon or discontinue use of a Telecom Facility must notify the Community Development Director by certified mail no less than thirty (30) days prior to such abandonment or discontinuance of use. The Telecom Operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable additional time as may be approved by the Community Development Director, within which to complete one of the following actions, provided that no Telecom Operator is then using the Telecom Facility: [DIFFERENTIATE BETWEEN OPERATOR OF THE TELECOM FACILITY AND THE TELECOM OPERATOR (TELECOM FACILITY OWNER VS. TELECOM FACILITY TENANT/CARRIER).]

1. Reactivate use of the Telecom Facility.
2. Transfer the rights to use the Telecom Facility to another Telecom Operator and the Telecom Operator immediately commences use within a reasonable period of time as determined by the Community Development Director.
3. Remove the Telecom Facility and restore the site.

**B. Abandonment.** Any Telecom Facility that is not operated for transmission and/or reception for a continuous period of ninety (90) days or whose Telecom Operator did not remove the Telecom Facility in accordance with Subsection A shall be deemed abandoned. Upon a finding of abandonment, the City shall provide notice to the Telecom Operator last known to use such Telecom Facility and, if applicable, the owner of the affected real property, providing thirty days from the date of the notice within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility.

2. Transfer the rights to use the Telecom Facility to another Telecom Operator who has agreed to reactivate the Telecom Facility within 30 days of the transfer.
3. Remove the Telecom Facility and restore the site.

**C. Removal by City.**

1. The City may remove an abandoned Telecom Facility on publicly owned property, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes at any time after thirty (30) days following the notice of abandonment.
2. If the City removes an abandoned Telecom Facility on publicly owned property, the City may, but shall not be required to, store the removed Telecom Facility or any part thereof. The owner of the premises upon which the abandoned Telecom Facility was located and all prior operators of the Telecom Facility shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. In addition, the City Council, at its option, may utilize any financial security required in conjunction with granting the telecom permit as reimbursement for such costs. Also, in lieu of storing the removed Telecom Facility, the City may convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

- D. City Lien on Property.** Until the cost of removal, repair, restoration, and storage is paid in full, a lien shall be placed on the abandoned personal property and any publicly owned real property on which the Telecom Facility was located for the full amount of the cost of removal, repair, restoration and storage. The City Clerk shall cause the lien to be recorded with the Orange County Recorder, with the costs of filing, processing, and release of such City Lien being added to the other costs listed in this subsection.



August 1, 2013

Mr. James Campbell  
Principal Planner  
Community Development Department  
100 Civic Center Drive  
Newport Beach, CA 92660

In Reference To: Revised Wireless Telecommunications Facilities Ordinance

Dear Mr. Campbell:

CalWA, the California Wireless Association appreciates receiving the City of Newport Beach revised Wireless Telecommunications Facilities Ordinance dated June 2013. We also received the e-mail notice that there will be another work session on your wireless ordinance before your Planning Commission on August 8th.

CalWA and PCIA, the Wireless Industry Association, submitted a letter and detailed comments in July 2012 on the draft of the City's Wireless Telecommunications Facilities (WTF) Ordinance. We are pleased that many of our comments and suggestions have been incorporated into the revised ordinance, and that the new draft now recognizes Section 6409 of the Middle Class Tax Relief and Jobs Creation Act of 2012 for the collocation, removal and replacement of equipment at existing wireless facilities. However, even with the recent modifications to the proposed WTF ordinance, further changes could better facilitate the responsible deployment of wireless infrastructure improvements needed to adequately serve the citizens of Newport Beach.

The PCIA/CalWA letter dated July 19, 2012 (attached) clearly sets forth the continuing need for improved wireless infrastructure. Wireless networks must adapt to dramatic capacity demands due to an 1,800 percent increase in traffic over the last four years and a projected growth of 18 times current levels of mobile data traffic over the next five years. Mobile internet users are projected to outnumber wireline users in two years. Without ongoing improvements to the City's wireless backbone infrastructure, dependable wireless services cannot be delivered to the citizens of Newport Beach.

The following provides CalWA's comments on the current June 2013 draft of Chapter 20.49 of City Staff's proposed Wireless Telecommunications Facilities Ordinance.



### **Section 20.49.010 - Purpose (Page 1)**

This initial statement should acknowledge the important role wireless infrastructure, mobile communication and internet access now plays in Newport Beach related to the City's economy, job creation, productivity and public safety. It should also acknowledge that wireless infrastructure is a "utility" as defined by California's Constitution, and should be permitted under a similar rubric as other utility infrastructure improvements.

### **Section 20.49.30 - Definitions, C. Antenna Classes (Pages 3 and 4)**

The antenna classes in the latest draft have been revised to remove "Collocations", formerly a Class 2 Facility. This has been made in compliance with federal law, and will help facilitate anticipated 4th Generation/LTE upgrades at existing sites within the City. However, additional sites will be needed, especially in high traffic areas to avoid capacity issues associated with rapidly growing mobile internet data transmissions.

DAS systems and "Small Cells" located within public rights of way are needed to provide coverage and capacity in residential neighborhoods and in certain commercial areas. Small Cells are also needed in "hot spot" - high traffic areas, primarily for capacity reasons. CalWA suggests that smaller sites within public rights-of-way be allowed through an administrative Encroachment Permit and/or Zoning Clearance process if the project demonstrates compliance with the ordinances' design and screening standards.

### **Section 20.49.050 - Location Preferences, B. Prohibited Locations (Page 6)**

The City should consider allowing wireless infrastructure in all zones in the City. The majority of Newport Beach residents now use their wireless smart phones, tablets and lap tops as their primary communication and internet access devices. They want these devices to work in their homes as well as where they work, and while they are traveling. We all want them to work everywhere, especially in an emergency situation. However, CalWA understands that residents don't want wireless facilities that result in adverse aesthetic impacts that affect views. CalWA suggests that wireless infrastructure, like wireline telephone, electricity and natural gas utility infrastructure be allowed in residential zones through a Minor Use Permit or Conditional Use Permit process if the project demonstrates compliance with the ordinances' design and screening standards.

Subsection 4 under Prohibited Locations indicates that telecom facilities are prohibited on streetlights. However, other sections of this draft WTF ordinance encourages the use of streetlights as a preferred location within the public rights-of-way. CalWA suggests that Subsection 4 be removed from Section 20.49-050.



## **Section 20.49.060 - General Development and Design Standards**

### **A. General Criteria (Page 7)**

CalWA supports the City in its efforts to minimize visual impacts of providing wireless infrastructure, and the use of reasonable aesthetic criteria to be used in evaluating wireless applications. However, CalWA would like City Staff, the Planning Commission and City Council to keep in mind the important "utility" role that wireless infrastructure plays in Newport Beach. No other utility infrastructure must adhere to the standards and criteria set forth in this ordinance. We respectfully request the City begin to look at wireless improvements in the same manner as other utility providers.

### **D. Setbacks (Page 8), and Section 20.49.070 - Permit Review Procedures, Subsection B. Permit Required, Table 4 -1 - Permit Requirements for Telecom Facilities (Page 14)**

Setbacks required in Section 20.49.070 - Permit Review Procedures, Subsection B. Permit Required, Table 4-1 - Permit Requirements for Telecom Facilities sets forth a setback of 150 feet from Residential, Open Space, Public Facilities and Parks and Recreation Districts as a criteria under which different classes of ministerial and discretionary permits are required. The suggested 150 foot criterion is arbitrary, and a lower setback of 50 or 100 feet should be considered. CalWA also suggest that there be no setback requirements for Class 3 sites located in public rights-of-way adjacent to residential, open space, public facilities and open space zoned properties. Under state law, the City's management of access to the public streets is required to be exercised in an equivalent manner as to all entities. Subjecting wireless facilities to setbacks that do not apply to other utility infrastructure utilizing vertical elements is unreasonable and raises questions as to whether such regulations are in fact based over perceived health concerns over radio frequency exposure in violation of federal law.

CalWA also suggests that Class 3 public right-of-way sites not located within the setback area of any of these land use zones should be allowed under a Zoning Clearance, and not a Minor Use Permit.

## **Section 20.49.060 - General Development and Design Standards**

### **F. Screening Standards, 6. Support Equipment (Pages 11 and 12)**

Undergrounding support equipment on private property and within public rights-of-way is a significant issue for wireless providers, especially in Newport Beach because of very high groundwater levels along the coast and in other more elevated areas of the City. Major rainstorms and isolated thunderstorms in the past have resulted in significant damage to support equipment, especially where flush-to-grade vents are required. This





has resulted in wireless carrier losses of millions of dollars over the years and the loss of coverage and capacity in local networks during major rainstorms, which adversely affects public safety during emergency situations. The City's wireless ordinance needs to provide reasonable flexibility for above grade support equipment, similar to what is required for other utility providers, and for the City's traffic signal equipment, which are critical for safety during major rainstorms.

## **Section 20.49.060 - General Development and Design Standards**

### **G. Emergency Communications Review (Page 15)**

The last decade has shown that wireless infrastructure does not interfere with emergency communication facilities. This includes the City of Newport Beach Police and Fire Departments, and the Orange County Fire Authority. Decade old interference issues created by Nextel's previous 800 megahertz operations have been resolved, so this type of review is no longer necessary. City Staff has the ability to forward any wireless permit application to your Police and Fire Department staff for review and comment. It should not be a requirement of a wireless facility applicant to submit a "pre-application test" of new or modified wireless infrastructure to determine if there might be potential interference. CalWA suggests that Section G is no longer necessary and should be removed. Such a pre-application test also violates federal law, as the FCC exercises exclusive jurisdiction over interference issues.

## **Section 20.49.060 - General Development and Design Standards**

### **I. Required Findings for Telecom Facilities (Page 15)**

These criteria are subjective and do not consider the technical requirements of the wireless providers to meet the growing demand for coverage and capacity needs of Newport Beach's citizens. More emphasis should be placed on the important roll wireless broadband access plays in the City.

## **Section 20.49.110 - Operational and Radio Frequency Compliance and Emissions Report (Pages 17 and 18)**

CalWA has worked with jurisdictions and wireless providers throughout the state, and has never come across a situation where Radio Frequency (RF) emissions exceed federally adopted FCC standards. It is our experience that when testing has been required, actual emissions are a small fraction of FCC standard allowable limits. Over the last decade, RF emission power levels have actually dropped because of network infrastructure expansion. In addition, for many sites, the antennas meet what are referred to in the FCC's regulations as "categorically excluded." See Section 1.1307(b)(1) of the FCC's rules. CalWA suggests that the Radio Frequency Compliance



and Emission Report required by Section 20.49.110 is no longer warranted, at the very least with respect to categorically excluded facilities, and should be removed.

## Conclusion

Reliable wireless communication is no longer a luxury. Wireless facilities provide the basic infrastructure for telecommunication/broadband accessibility that allows the citizens of Newport Beach high-speed Internet access. The City currently has a unique opportunity to facilitate expanded and improved wireless services to its residents, businesses and visitors by amending its WTF Ordinance in consideration of CalWA's suggested revisions.

CalWA will participate in the upcoming ordinance revision process, and will have a representative at the August 8th Planning Commission workshop to answer any questions City Staff or the Planning Commission may have. We appreciate your consideration and support to further our mutual goal of implementing and deploying responsible and timely wireless infrastructure to serve the City of Newport Beach.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. Dean Brown'.

W. Dean Brown, Regulatory Committee  
California Wireless Association (CalWA)  
c/o The Planning Consortium  
23181 Verdugo Drive, Suite 100B  
Laguna Hills, CA. 92653  
(714) 328-6313

CC: Sean Scully Co-Chair, Regulatory Committee, CalWA  
Julian Quattlebaum, Co-Chair, Regulatory Committee, CalWA  
Alex Reynolds, PCIA





**Sprint**  
330 Commerce  
Irvine, CA 92602

August 5, 2013

Mr. James Campbell  
Principal Planner  
Community Development Department  
100 Civic Center Drive  
Newport Beach, CA 92660

RECEIVED BY  
COMMUNITY

AUG 14 2013

DEVELOPMENT  
CITY OF NEWPORT BEACH

In Reference To: Revised Wireless Telecommunications Facilities Ordinance

Dear Mr. Campbell:

Sprint has reviewed the City of Newport Beach revised Wireless Telecommunications Facilities Ordinance dated June 2013. CalWA, the California Wireless Association has forwarded us their response to you dated July 26<sup>th</sup>. While Sprint broadly concurs with CalWA's review, we would like to add the following comments:

- In the last sentence of paragraph N., Section 20.49.30 Definitions of C. Antenna Classes, it is stated that false trees are no longer considered a "stealth facility". We would challenge this definition; false trees are indeed a stealth design. Tree designs have improved greatly over recent years and with the addition of "antenna socks", more branches, and multi-trunk trees etc., false trees can be well integrated into an area's existing vegetation and should be classified as a "stealth facility".
- In paragraph D of Section 20.49.050 Location Preferences, Sprint could not agree with the recommendation that a new telecom facility proposed within 1,000 feet of an existing telecom facility be required to collocate on the same building or structure as the existing telecom facility. While it would be our goal to look at whether collocation was feasible, in many cases it is not. This can be due to space constraints if the facility is on a rooftop, lack of height available on an existing monopole or similar structure, structural incapability of a free standing structure to support another wireless carrier etc. It is therefore too restrictive to require collocation in all cases.



- In the paragraph dealing with height in 20.49.060 – General Development and Design Standards, it states that antennas shall be installed at a minimum height possible to provide “average service”. Sprint would challenge the definition of “average service”, our goal is to provide substantially better than average service to our customers and we would not want to limit coverage from any of our telecom facilities to such a low level.
- In the screening standard paragraphs for support equipment in the same section, specifically paragraph 6a does not appear to support the use of ground mounted support equipment for telecom facilities mounted to rooftops or within buildings. Sprint would like to see the inclusion of ground mounted facilities for sites at these locations.

We would be grateful if the City would take into account Sprint’s comments at its review meeting on August 8<sup>th</sup>.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "K. Crompton".

Kathryn Crompton  
Manager – Network Vision – ALU Markets  
National Site Development

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City of Newport Beach, Community Development Department  
Mr. Jim Campbell, Principal Planner  
100 Civic Center Drive  
Newport Beach, CA 92660

August 21, 2013

**RE: Newport Beach Telecom Ordinance Update**

Mr. Campbell,

On behalf of Verizon Wireless, I would like to thank you for yet another opportunity to provide comments to City Staff, concerning the proposed update to the City's Wireless Communications Facilities Ordinance. The last Stakeholder's meeting, held on July 25, 2012, proved to be useful and constructive. We are pleased to see that Staff took the time to seriously consider and integrate some of the concerns communicated by the various industry representatives and other concerned/interested parties, into the current version of the draft ordinance. In anticipation of the upcoming September 5th Planning Commission Study Session (rescheduled from August 8<sup>th</sup>), the following discussion areas and comments are respectfully submitted for your consideration:

**20.49.030. Definitions**

***C. Antenna Classes***

**4. (Pg. 4)** Please provide more clarity on what defines a Class 4 Freestanding Structure. Providing examples of facilities would be helpful. Do Class 4 structures include stealth and non-stealth facilities? Also, the definition states that it is a structure constructed for the "sole or primary purpose of supporting the Telecom Facility." For example, consider a flagpole or similar facility on a property. If the flagpole was to be removed and replaced with a stealth version, a dual purpose is now served. The existing structure was replaced with a facility of similar aesthetics and function. Since it was previously a flagpole that was slightly altered to structurally support telecom equipment, would it now be considered a wireless facility as its primary purpose, rather than a dual function? Would staff interpret this as a Class 4 or 1? What characteristics provide the distinction? Verizon believes that in such a scenario, the facility should not be defined as one whose primary purpose is a wireless communications facility.

**D. Base Station (Pg. 4):** The definition for Base Station does not seem to match that provided by the FCC. If a Base Station does not include the antennas, the antenna supporting structure, or the support



equipment, then what specifically does it include by the definition in the draft ordinance? Does it only refer to the equipment cabinets? Are equipment cabinets not supporting equipment? This definition should be revised. On January 25, 2013, the Federal Communications Commission Wireless Telecommunications Bureau, offered guidance on the interpretation of Section 6409 (A) the Middle Class Tax Relief and Job Creation Act (TRA). The FCC defined base station as:

**(D) Base Station**

A "base station" consists of "radio transceivers, antennas, coaxial cable, a regular and backup power supply, and other associated electronics." Section 6409(a) applies to the collocation, removal, or replacement of equipment on a wireless tower or base station. In this context, the FCC believes it is reasonable to interpret a "base station" to include a structure that currently supports or houses an antenna, transceiver, or other associated equipment that constitutes part of a base station.

There should also be some language or additional detail in the ordinance update in regards to the various types of "Eligible Facilities Requests" under the 2012 TRA legislation. This may be considered to be included in section 20.49.100. The TRA provides for an administrative process for (a) collocation of new transmission equipment, removal of transmission equipment, and replacement of transmission equipment (under specified criteria). Verizon has used a checklist/worksheet to help determine whether a facility/project fits the required criteria to be an "eligible facility", and would be happy to provide it to City Staff as a reference tool if they so please.

**Section 20.49.050- Location Preferences**

**D. Collocation Installations (Pg. 7)** The requirement that a new telecom facility proposed within 1,000 feet of an existing Telecom Facility shall be required to collocate on the same building or structure as the Existing Telecom Facility can be problematic. While Subsection 1 discusses that compelling evidence can allow for exceptions to this rule, what types of evidence would this include? One scenario would be lack of room to locate equipment and another would be lack of space for antennas. Often even though there is an existing facility within 1,000 feet, that facility it is not within the required coverage area for the radio frequency objectives. Lastly, what if the existing facility is legal nonconforming and any proposal would be more than a five percent (5%) change, as listed in Section 20.49.100?

2. How can the City impose a condition of approval on a property owner, to provide for future collocation of telecom facilities? While the condition can be general in saying that the property owner will make the best efforts to cooperate with the City to provide for future collocation, many property owners may be hesitant to authorize a condition on a future project.

## **Section 20.49.060- General Development and Design Standards**

### ***C. Height (Pg. 8)***

1. There is some concern with limiting the height of building/roof mounted structures to the base height limit for the zoning district due to the fact that most buildings are already constructed to this maximum height limit. If the proposed building to locate on is at the maximum base height limit, there is no additional height for the carrier to locate their antennas on top of the building, which is the preferred location in Section 20.49.050. While the code proposes to allow additional height through a heightened review process, it is recommended that the proposed code be revised to state that any building/roof mounted stealth antennas are allowed 15 feet above the maximum base height limit. This will then alleviate the Planning Commission from having to review multiple proposals due to there being no additional height available on the existing building.

4a. Additionally, there is some concern with limiting the height on existing streetlight standards, utility poles, utility towers or similar structures. These facility types can all have varying height, which can potentially make them infeasible if the addition of the antennas exceeds the 35' height limit. Instead, we recommend not limiting the actual height, but limiting how high above these structures the antennas can go.

4c. Lastly, with regard to height, limiting ground-mounted flagpoles to a maximum height of 35' may actually limit the ability to provide the necessary coverage for the antennas. Shorter flagpoles often do not allow for a full tapered and natural flagpole look. We have found that taller flagpoles allow for more of a tapered appearance and provide a more aesthetically pleasing design.

***C. Setbacks (Pg. 8)*** While complying with the required setbacks for the specified zoning district is feasible for most installations, there are instances when certain wireless facility designs, such as flagpoles, a monument sign or a clock tower would logically, aesthetically, and functionally make more sense to be located within a front or side yard setback. Has the City considered if in certain instances this could potentially be allowed? Granted, other concerns and protective measures, such as facility placement and equipment placement will be considered and integrated into the design of these facilities, in order to account for line of sight/corner cut-off requirements, so that a vehicle operator's visibility of traffic is not obscured. Is there any mechanism for relief in these types of situations?

***F. Screening Standards (Pg. 11)*** We commend the City for giving applicants some flexibility with the design and placement of supporting equipment, as carriers often run into several constraints (i.e. construction, zoning,) when designing sites. Often if there are too many limitations and specifications on the design of the wireless facilities in the Code, many of the "would be" optimal candidates (for the City and carriers) are then rendered infeasible.





4c. This may actually be the case with the proposed code in regards to flagpole installations, given that the proposed ordinance limits the diameter of the pole to 24" at the base and 20" at the top. This combined with the minimum 35' height limit in Section 20.49.060.4.c will limit a carrier's ability to utilize this design as the current technology will likely not fit within these parameters.

6. This section regarding support equipment and the requirement/recommendation of underground vaulting, especially flush mounted vents, is problematic and concerning for many carriers. Telecommunications equipment housed in any self-contained, underground vault generates heat, which can damage or destroy the equipment. Additionally, moisture, either from evaporation or flooding from rain, can severely damage or destroy the equipment. Flush mounted vents further enhance the chances of equipment damage. While damage is a concern, the primary concern is that when the equipment is damaged it can cause a site to go off air, which will have a drastic impact on the overall coverage in the City of Newport Beach.

6.a.1. This section mentions several options regarding equipment locations for building-mounted facilities; such as within the building, in a vault or on the roof, but it does not mention allowing equipment to be located at grade within a screened equipment enclosure. We recommend adding this as an additional option.

#### **Consider encouraging/providing flexibility in standards for emergency backup generators**

The Ordinance is currently silent on its stance and interpretation on emergency backup generators. The City should even consider placing emergency backup generators in their own category, as opposed to the umbrella of "supporting equipment", given the increasing importance of having permanent generators at all wireless facility sites. The City should consider adding a section/verbiage regarding emergency back-up diesel generators, and encourage the flexibility to use all types (diesel, propane, alternative fuel). Standby generators and batteries serve a vital role to wireless carriers' networks, especially in power outages, emergencies and natural disasters. In the event power outages, a wireless carrier's equipment will first transition over to the back-up batteries. The batteries can run the site for a few hours depending upon the demand placed on the equipment. Should the power outage extend beyond the capacity of the batteries, the backup generator will automatically start and continue to run the site. While many public safety agencies employ their own two-way radio systems for intra-agency communications, the various wireless carriers' networks are often the link to other agencies, organizations, and the outside world. Backup batteries and generators allow wireless communications facility sites to continue providing valuable communications services in the event of a power outage, natural disaster, or other emergency.

Additionally, in light of limited space on a number of properties in beach communities, as a note, the City should consider variances or some relief in parking, setbacks, etc. for the location of generators.



**Table 4-1 (Pg. 14)**

It would be user friendly to define LUP, MUP, LTP, CUP, and ZC as footnotes in the table, for ease of reference. Additionally it would also be convenient to add a footnote or column that specifies the final determining body for each antenna class/proposed location, for ease of reference, reinforcement, and clarity.

Again, Verizon Wireless would like to thank the City for keeping the wireless carriers, and other interested parties, apprised of the developments and progression of this proposed ordinance amendment, while allowing us the opportunity to provide our comments. We look forward to working with the City towards the successful completion of developing a sound ordinance; one that strikes an equitable balance between the wireless industry's need to meet the increasing coverage and capacity demands of their customers and networks, while protecting the residents, businesses and land uses of the City of Newport Beach.

Best Regards,

A handwritten signature in blue ink, appearing to read "Sonal Thakur", written in a cursive style.

Sonal Thakur

Authorized Representative of Verizon Wireless

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## Comments of Larry Tucker

Jim, I have set forth in track changes mode the edits and questions I have. I have not looked at Telecom Companies comments but will do so before the meeting tonight. My goal for tonight's meeting is to walk through each page of the Ordinance, hearing from staff and then the stakeholders, perhaps even one issue at a time. I want to get into the specifics of the language so that, hopefully, the Commission can give guidance on the issues and staff can have a cleaned up version back for review, hopefully in a couple of weeks. But that may not be possible depending on the amount of redrafting that will be required. For now, please distribute to the Commission and the stakeholders, and make available to the public, as soon as you can and we will see what happens tonight. Thanks. Larry.

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## **Chapter 20.49 – Wireless Telecommunications Facilities**

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### **Sections**

20.49.010 – Purpose

20.49.020 – Effect of Chapter

#### **General Provisions**

20.49.030 – Definitions

#### **20.49.040 – Available Technology**

20.49.050 – Location Preferences

20.49.060 – General Development and Design Standards

20.49.070 – Permit Review Procedures

20.49.080 – Permit Implementation, Time Limits, Duration, and Appeals

20.49.090 – Agreement for Use of City-owned or City-held Trust Property

20.49.100 – Modification of Existing Telecom Facilities

20.49.110 – Operational and Radio Frequency Compliance and Emissions Report

20.49.120 – Right to Review or Revoke Permit

20.49.130 – Removal of Telecom Facilities

### **20.49.010 – Purpose**

- A. The purpose of this Chapter is to provide for the installation, modification, operation and maintenance of wireless telecommunication facilities (“Telecom Facilities”) on public and private property consistent with state and federal law while ensuring public safety, reducing the visual effects of ~~Telecom Facilities~~ equipment on public streetscapes, protecting scenic, ocean and coastal public views, and otherwise mitigating the impacts of Telecom ~~such~~ Facilities. More specifically, the regulations contained herein are intended to encourage; 1) ~~encourage~~ the location of Telecom Facilities ~~Antennas~~ in non-residential areas, 2) ~~encourage~~ Collocation at new and existing Antenna sites, and 3) ~~encourage~~ Telecom Facilities to be located in areas where adverse visual impacts on the community and public views are minimized.



- B. The provisions of this Chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This Chapter shall be applied to providers, operators, and maintainers of wireless services regardless of whether authorized by state or federal regulations. This Chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services.
- C. All Telecom Facilities approved under this Chapter shall utilize the most efficient and least obtrusive available technology in order to minimize the number of Telecom Facilities in the City and reduce their visual impact on the community and public views.

#### **20.49.020 – Effect of Chapter**

- A. **Regulatory Scope.** These regulations are applicable to all Telecom Facilities providing voice and/or data transmission such as, but not limited to, cell phone, internet and radio relay stations.
- B. **Permit and/or Agreement Required.** Prior to construction or modification of any Telecom Facility in the City, the applicant shall obtain a Minor Use Permit (MUP), Conditional Use Permit (CUP), Limited Term Permit (LTP), or Zoning Clearance (ZC), depending on the proposed location, Antenna Class, and method of installation, in accordance with Section 20.49.070 (Permit Review Procedures). Applicants who obtain a MUP, CUP, LTP, or ZC (and an encroachment permit, if required) for any Telecom Facility approved to be located on any City-owned property or City-held Trust property, shall enter into an agreement prepared and executed by the City Manager or its designee prior to construction of the Telecom Facility, consistent with Section 20.49.090 (Agreement for Use of City-owned or City-held Trust Property).
- C. **Exempt Facilities.** The following types of facilities are exempt from the provisions of this Chapter:
  - 1. Amateur radio antennas and receiving satellite dish antennas, and citizen band radio antennas regulated by Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities).
  - 2. Dish and other antennas subject to the FCC Over-the-Air Reception Devices (“OTARD”) rule, 47 C.F.R. § 1.4000 that are designed and used to receive video programming signals from (a) direct broadcast satellite services, or (b) television broadcast stations, or (c) for wireless cable service.
  - 3. During an emergency, as defined by Title 2 of the NBMC, the City Manager, Director of Emergency Services or Assistant Director of Emergency Services shall have the authority to approve the placement of a Telecom Facility in any district on a temporary basis not exceeding ninety (90) calendar days from the date of authorization. Such authorization may be extended by the City on a showing of good cause.

4. Facilities exempt from some or all of the provisions of this Chapter by operation of state or federal law to the extent so determined by the City.
5. Systems installed or operated at the direction of the City or its contractor.
6. Systems installed entirely within buildings for the sole purpose of providing wireless telecommunications services or data transmission services to building occupants.

**D. Other Regulations.** Notwithstanding the provisions of this Chapter, all Telecom Facilities within the City shall comply with the following requirements:

1. Rules, regulations, policies, or conditions in any permit, license, or agreement issued by a local, state or federal agency which has jurisdiction over the Telecom Facility.
2. Rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).

**E. Regulations not in Conflict or Preempted.** All Telecom Facilities within the City shall comply with the following requirements unless in conflict with or preempted by the provisions of this Chapter:

1. All applicable City design guidelines and standards.
2. Requirements established by any other provision of the Municipal Code and by any other ordinance and regulation of the City.

**F. Legal Nonconforming Facility.** Any Telecom Facility that is lawfully constructed, erected, or approved prior to the effective date of this Chapter that is operating in compliance with all applicable laws, and which Facility does not conform to the requirements of this Chapter shall be accepted and allowed as a legal nonconforming Facility if otherwise approved and constructed. Legal nonconforming Telecom Facilities shall comply at all times with the laws, ordinances, and regulations in effect at the time the application was deemed complete, and any applicable federal and state laws as they may be amended or enacted, and shall at all times comply with any conditions of approval.

#### **20.49.030 – Definitions.**

For the purposes of this Chapter, the following definitions shall apply:

- A. Antenna.** Antenna means a device used to transmit and/or receive radio or electromagnetic waves between earth and/or satellite-based systems, such as reflecting discs, panels, microwave dishes, whip antennas, Antennas, arrays, or other similar devices.
- B. Antenna Array.** Antenna Array means Antennas having transmission and/or reception elements extending in more than one direction, and directional Antennas mounted upon

and rotated through a vertical mast or tower interconnecting the beam and Antenna support, all of which elements are deemed to be part of the Antenna.

**C. Antenna Classes.** Antenna Classes are Telecom Facilities and the attendant Support Equipment separated into the following distinct classes:

1. Class 1 (Stealth/Screened): a Facility with Antennas mounted on an existing or proposed non-residential building or other structure not primarily intended to be an antenna support structure where Antennas and Support Equipment, including the base station, are fully screened so that they are not visible to the general public.
2. Class 2 (Visible): a Facility with Antennas mounted on an existing non-residential building, structure, pole, light standard, Utility Tower, Wireless Tower and/or Lattice Tower.
3. Class 3 (Public Right-of-Way Installations): a Facility with Antennas installed on a structure located in the public right-of-way.
4. Class 4 (Freestanding Structure): a Facility with Antennas mounted on a new freestanding structure constructed for the sole or primary purpose of supporting the Telecom Facility.
5. Class 5 (Temporary): a Facility including associated Support Equipment that is installed at a site on a temporary basis pursuant to a Limited Term Permit. A Class 5 installation may also be installed in connection with a special event upon the approval of a Special Events Permit pursuant to Chapter 11.03 without a Limited Term Permit.

**D. Base Station.** Base Station means the electronic equipment at a Telecom Facility installed and operated by the Telecom Operator that together perform the initial signal transmission and signal control functions. Base Station does not include the Antennas and Antenna support structure, or the Support Equipment, nor does it include any portion of DAS.

**E. City-owned or City-held Trust Property.** City-owned or City-held Trust Property means all real property and improvements owned, operated or controlled by the City, other than the public right-of-way, within the City's jurisdiction, including but ~~is~~ not limited to City Hall, Police and Fire facilities, recreational facilities, parks, [beaches \(?\)](#), libraries, monuments, signs, streetlights and traffic control standards.

**F. Collocation.** Collocation means an arrangement whereby multiple Telecom Facilities are installed on the same building or structure.

**G. Distributed Antenna System, DAS.** Distributed Antenna System (DAS) means a network of one or more Antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one or more third-party wireless service providers. DAS also includes the equipment location, sometimes called a

“hub” or “hotel” where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services.

**H. FCC.** FCC means the Federal Communications Commission, the federal regulatory agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.

**I. Feasible or Feasibly.** Feasible or Feasibly means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal and technological factors.

**J. Lattice Tower.** Lattice Tower means a freestanding open framework structure used to support Antennas, typically with three or four support legs of open metal crossbeams or crossbars.

**K. Monopole.** Monopole means a single free-standing pole or pole-based structure solely used to act as or support a Telecom Antenna or Antenna Arrays.

**L. Operator or Telecom Operator.** Operator or Telecom Operator means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a Telecom Facility or facilities within the City.

**M. Public Right-of-Way.** Public Right-of-Way or (“PROW”) means the improved or unimproved surface of any street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. PROW includes public streets, roads, lanes, alleys, sidewalks, medians, parkways and landscaped lots.

**N. Stealth or Stealth Facility.** Stealth or Stealth Facility means a Telecom Facility in which the Antenna, and the Support Equipment, are completely hidden from view in a monument, cupola, pole-based structure, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures which are obviously not such a natural or architectural feature to the average observer do not qualify within this definition. A false tree is not a Stealth Facility.

**O. Support Equipment.** Support Equipment means the physical, electrical and/or electronic equipment included within a Telecom Facility used to house, power, and/or contribute to the processing of signals from or to the Facility’s Antenna or Antennas, including but not limited to a base station, cabling, air conditioning units, equipment cabinets, pedestals, and electric service meters. Support Equipment does not include DAS, Antennas or the building or structure to which the Antennas or other equipment are attached.

**P. Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or Facility.** [\[Why not just pick one of these words and stick with it?\]](#) Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or simply Facility or Facilities means an installation that sends

and/or receives wireless radio frequency signals or electromagnetic waves, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.

- Q. Utility Pole.** Utility Pole means a single freestanding pole used to support services provided by a public or private utility provider.
- R. Utility Tower.** Utility Tower shall mean an open framework structure (see lattice tower) or steel pole used to support electric transmission facilities.
- S. Wireless Tower.** Wireless Tower means any structure built for the sole or primary purpose of supporting Antennas used to provide wireless services authorized by the FCC. A Distributed Antenna System (DAS) installed pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission on a water tower, utility tower, street light, or other structures built or rebuilt or replaced primarily for a purpose other than supporting wireless services authorized by the FCC, including any structure installed pursuant to California Public Utility Code Section 7901, is not a Wireless Tower for purposes of this definition. For an example only, a prior-existing light standard which is replaced with a new light standard to permit the addition of Antennas shall not be considered a Wireless Tower, but rather a replacement light standard.

#### **20.49.050 – Location Preferences.**

- A. Preferred Locations.** To limit the adverse visual effects of and proliferation of new or individual Telecom Facilities in the City, the following list establishes the order of preference for the location and installation of Telecom Facilities, from highest priority location and technique to lowest.
1. Collocation of a new facility at an existing facility.
  2. Class 1.
  3. Class 2.
  4. Class 3.
  5. Class 4.
  6. Class 5.
- B. Prohibited Locations.** Telecom Facilities are prohibited in the following locations:

1. On properties zoned for single-unit or two-unit residential development, including equivalent PC District designation.
2. On properties zoned for multi-unit residential development and mixed-use development where the maximum allowable number of dwelling units is four (4) units.

3. In the Open Space (OS) zoning district, unless Telecom Facilities are collocated on an existing Utility Tower within a utility easement area, or collocated on an existing Telecom Facility.

~~3.4.~~ [Comment: Isn't it possible that there could be an appropriate place for a Telecom Facility in one of these zones, although not many places?]

~~4.5.~~ On streetlights. [Comment: There is some language about streetlights elsewhere in this Ordinance that causes me to wonder if streetlights should be a prohibited location.]

**C. Installations in the Public Right-of-Way.** All Telecom Facilities proposed to be located in the public right-of way shall comply with the provisions of Title 13. Antenna installations on an existing or replacement streetlight [Comment: I thought streetlights were a prohibited location.] pole shall be compatible in design, scale, and proportion to streetlights and the pole on which they are mounted.

**D. Collocation Installations.** A new Telecom Facility proposed within one thousand (1,000) feet of an existing Telecom Facility shall be required to collocate on the same building or structure as the existing Telecom Facility.

1. Exception: If the reviewing authority determines, based on a preponderance of compelling evidence submitted ~~by the applicant~~, that Collocation of one or more new Telecom Facilities within one thousand (1,000) feet of an existing Telecom Facility is not Feasible, then such Collocation shall not be required.

2. Condition Requiring Future Collocation. In approving a Telecom Facility, the review authority may impose a condition of approval providing for future Collocation of Telecom Facilities by other carriers at the same site to the extent Feasible.

#### **20.49.060 – General Development and Design Standards.**

**A. General Criteria.** All Telecom Facilities shall employ design techniques to minimize visual impacts and provide appropriate screening to result in the least visually intrusive means of providing the service. Such techniques shall be employed to make the installation, appearance and operations of the Telecom Facility as visually inconspicuous as ~~practicable~~possible [Comment: Much is possible, but not always practicable]. To the greatest extent Feasible, Telecom Facilities shall be designed to minimize the visual impact of the Telecom Facility by means of location, placement, height, screening, landscaping, and

shall be compatible with existing architectural elements, building materials, other building characteristics, and the surrounding area.

In addition to the other design standards of this Section, the following criteria shall be considered by the review authority in connection with its processing of any MUP, CUP, LTP, or ZC for a Telecom Facility:

1. Blending. The extent to which the proposed Telecom Facility blends into the surrounding environment or is architecturally compatible and integrated into the structure.
2. Screening. The extent to which the proposed Telecom Facility is concealed or screened by existing or proposed new topography, vegetation, buildings or other structures.
3. Size. The total size of the proposed Telecom Facility, particularly in relation to surrounding and supporting structures.
4. Location. Proposed Telecom Facilities shall be located so as to utilize existing natural or man-made features in the vicinity of the Telecom Facility, including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening and blending with the predominant visual backdrop.

4.5. Collocation. In evaluating whether the Collocation of a Telecom Facility is Feasible, the criteria listed in 1-4 above shall be used to evaluate the visual effect of the combined number of Telecom Facilities at the proposed location.

**B. Public View Protection.** Telecom Facilities involving a site adjacent to an identified public view point or corridor, as identified in General Plan Policy NR 20.3 (Public Views), shall be reviewed to evaluate the potential impact to public views consistent with Section 20.30.100 (Public View Protection). [Comment: NR 20.3 allows for other public views to be identified in the future. Therefore, shouldn't the review process also be able to evaluate an impact to a public view that is not then listed in NR20.3?]

**C. Height.**

1. Telecom Facilities installed on buildings or other structures shall comply with the base height limit established in Part 2 (Zoning Districts, Allowable Uses, and Zoning District Standards) for the zoning district in which the Telecom Facility is located. [Comment: The staff report indicates that a new facility would be able to exceed the base height by 5'. Maybe I misunderstood the staff report, so please explain.]
2. Applications for the installation of Telecom Facilities proposed to be greater than the base height limit for the zoning district in which the Telecom Facility is located shall be subject to review and action by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP for a Telecom Facility to exceed the base

height limit after making all of the required findings in Section 20.49.070.H (Permit Review Procedures).

3. All Telecom Facilities shall comply with Antenna height restrictions, if any, required by the Federal Aviation Administration, and shall comply with Section 20.30.060.E. (Airport Environs Land Use Plan ~~(AELUP)~~ for John Wayne Airport and Airport Land Use Commission ~~(ALUC)~~ Review Requirements) as may be in force at the time the Telecom Facility is permitted or modified.
4. Antennas shall be installed at the minimum height possible to provide average [Comment: Not sure what average is, but don't we want effective service?] service to the Telecom Operator's proposed service area. In any case, no Antenna or other telecom equipment or screening structure shall extend higher than the following maximum height limits:
  - a. Telecom Facilities installed on streetlight standards, Utility Poles, Utility Towers or other similar structures within the public right-of-way shall not exceed 35 feet in height above the finished grade.
  - b. Telecom Facilities may be installed on existing Utility Poles or Utility Towers that exceed 35 feet above the finished grade where the purposes of the existing Utility Pole or Utility Tower is to carry electricity or provide other wireless data transmission provided that the top of the Antenna does not extend above the top of the Utility Pole or Utility Tower.
  - c. Telecom Facilities installed in ground-mounted flagpoles may be installed at a maximum height of 35 feet.

**D. Setbacks.** Proposed Telecom Facilities shall comply with the required setback established by the development standards for the zoning district in which the Telecom Facility is proposed to be located. Setbacks shall be measured from the part of the Telecom Facility closest to the applicable lot line or structure.

**E. Design Techniques.** Design techniques shall result in the installation of a Telecom Facility that is in scale with the surrounding area, ~~screenshides~~ [Comment: The Ordinance has been using the word "screen" so I would recommend we stick with one word to describe the objective rather than introduce the word "hide" which could then be argued to mean something other than screen.] the installation from predominant views from surrounding properties, and prevents the Telecom Facility from visually dominating the surrounding area. Design techniques may include the following:

1. Screening elements to disguise, or otherwise hide the Telecom Facility from view from surrounding uses.



2. Painting and/or coloring the Telecom Facility to blend into the predominant visual backdrop.
3. Siting the Telecom Facility to utilize existing features (buildings, topography, vegetation, etc.) to screen or hide the Telecom Facility.
4. Utilizing simulated natural features (trees, rocks, etc.) to screen or hide the Telecom Facility.
5. Providing Telecom Facilities of a size that, as determined by the City, is not visually obtrusive such that any effort to screen the Telecom Facility would not create greater visual impacts than the Telecom Facility itself.

**F. Screening Standards.** For Collocation installations, the screening method shall be materially similar to those used on the existing Telecom Facility, and shall not diminish the screening of the Telecom Facility. If determined necessary by the review authority, use of other improved and appropriate screening methods may be required to screen the Antennas and Support Equipment from public view. The Following is a non-exclusive list of potential design and screening techniques that should be considered:

1. For Class 1 (Stealth/Screened) Antenna Installations:
  - a. All Telecom Facility components, including all Antenna panels and Support Equipment, shall be fully screened, and mounted either inside the building or structure, or behind the proposed screening elements and not on the exterior face of the building or structure.
  - b. Screening materials shall match in color, size, proportion, style, and quality with the exterior design and architectural character of the structure and the surrounding visual environment. If determined necessary by the reviewing authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
  - c. In conditions where the Antennas and Support Equipment are installed within a new freestanding structure, (an architectural feature such as a steeple, religious symbol or tower, cupola, clock tower, sign, etc.), the installation shall blend in the predominant visual backdrop so it appears to be a decorative and attractive architectural feature.
2. For Class 2 (Visible) Antenna Installations:
  - a. Building or structure mounted Antennas shall be painted or otherwise coated to match or complement the predominant color of the structure on which they are mounted and shall be compatible with the architectural texture and materials of the building to which the Antennas are mounted. No cables and mounting brackets or any other associated equipment or wires shall be visible from above, below or the

side of the Antennas. [\[Comment: If the facility is visible, will this actually be possible?\]](#)

- b. All Antenna components and Support Equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.

3. For Class 3 (Public Right-of-Way) Antenna Installations:

- a. Whenever Feasible, new Antennas proposed to be installed in the public right-of-way shall be placed on existing or replacement utility structures, light standards, or other existing vertical structures. Antenna installations on existing or replacement streetlight poles [\[are these prohibited?\]](#), traffic control standards, or Utility Poles shall be screened by means of canisters, radomes, shrouds other screening measures whenever Feasible, and treated with exterior coatings of a color and texture to match the existing pole.
- b. If Antennas are proposed to be installed without screening, they shall be flush-mounted to the pole and shall be treated with exterior coatings of a color and texture to match the existing pole.
- c. If a new pole is proposed to replace an existing pole, the replacement pole shall be consistent with the size, shape, style and design of the existing pole, including any attached light arms.

4. For Class 4 (Freestanding Structure) Antenna Installations:

- a. For a false rock, the proposed screen structure shall match in scale and color other rock outcroppings in the general vicinity of the proposed site. A false rock screen may not be considered appropriate in areas that do not have natural rock outcroppings.
- b. The installation of a false tree (such as but without limitation a monopine or monopalm, or false shrubbery) shall be designed for and located in a setting that is compatible with the proposed screening method. Such installations shall be situated so as to utilize existing natural or manmade features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening. For false trees or shrubbery installations, all Antennas and Antenna supports shall be contained within the canopy of the tree design, and other vegetation comparable to that replicated in the proposed screen structure shall be prevalent in the immediate vicinity of the antenna site, and the addition of new comparable living vegetation may be necessary to enhance the false tree or shrubbery screen structure.

- c. For installations of a flagpole, the pole shall not exceed 24 inches in width at the base of the flagpole and also shall not exceed 20 inches in width at the top of the flagpole.
5. For Class 5 (Temporary) Antenna Installations:
- a. A temporary Telecom Facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary by the review authority, the appropriate screening methods will be determined through the permitting process reflecting the temporary nature of the Telecom Facility.
6. Support Equipment. All Support Equipment associated with the operation of any Telecom Facility shall be placed or mounted in the least visually obtrusive location practicablepossible, and shall be screened from view.
- a. Installations on Private Property. The following is a non-exclusive list of potential screening techniques for Telecom Facilities located on private property:
    - (1) Building-Mounted Facilities. For building or structure-mounted Antenna installations, Support Equipment for the Telecom Facility may be located inside the building, in an underground vault, or on the roof of the building that the Telecom Facility is located on, provided that both the equipment and any screening materials are architecturally compatible and/or painted the color of the building, roof, and/or surroundings thereby providing screening. If placed in an underground vault, flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view may be incorporated.
    - (2) Roof-Mounted Facilities. All screening materials for roof-mounted Telecom Facilities shall be of a quality and design compatible with the architecture, color, texture and materials of the building to which it is mounted. If determined necessary by the review authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
    - (3) Freestanding Facilities. For freestanding Telecom Facilities installations, not mounted on a building or structure, Support Equipment for the Telecom Facility may be visually screened by locating the Support Equipment in a fully enclosed building, in an underground vault, or in a security enclosure consisting of walls and/or landscaping to effectively screen the Support Equipment at the time of installation.
    - (4) All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings.

- (5) Screening enclosures may utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a “closed-mesh” design (i.e. one-inch gaps) or may consist of an alternate enclosure design approved by the review authority. In general, the screening enclosure shall be made of non-reflective material and painted to blend with surrounding materials and colors.
  - (6) If placed in an underground vault, flush-to-grade vents, or alternatively, vents that extend no more than 24 inches above the finished grade and are screened from public view may be utilized.
- b. Installations in a Public Right-of-Way. The following is a non-exclusive list of potential screening techniques for Telecom Facilities located in a public right-of-way:
- (1) Where the existing utilities services (e.g., telephone, power, cable TV) are located underground, the Support Equipment shall be placed underground, consistent with Chapter 13.20. Flush-to-grade underground vault enclosures, including flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view may be incorporated. Electrical meters required for the purpose of providing power for the proposed Telecom Facility may be installed above ground on a pedestal in a public right-of-way.
  - (2) Support equipment approved to be located above ground in a public right-of-way shall be painted or otherwise coated to be visually compatible with the existing or replacement pole, lighting and/or traffic signal equipment without substantially increasing the width of the structure.
  - (3) All transmission or amplification equipment such as remote radio units, tower mounted amplifiers and surge suppressors shall be mounted inside the streetlight pole or traffic control standard without increasing the pole diameter or shall be installed in a flush-to-grade vault enclosure adjacent to the base of the pole.

**G. Night Lighting.** Telecom Facilities shall not be lighted except for security lighting at the lowest intensity necessary for that purpose or as may be recommended by the U.S. Flag Code. Such lighting shall be shielded so that direct illumination does not directly shine on nearby properties. The review authority shall consult with the Police Department regarding proposed security lighting for Telecom Facilities on a case-by-case basis.

**H. Signs and Advertising.** No advertising signage or identifying logos shall be displayed on any Telecom Facility except for small identification, address, warning, and similar information plates. Such information plates shall be identified in the telecom application and shall be subject to approval by the review authority. Signage required by state or federal regulations shall be allowed in its smallest permissible size.

- I. Nonconformities.** A proposed Telecom Facility shall not create any new or increased nonconformity as defined in the Zoning Code, such as, but not limited to, a reduction in and/or elimination of, required parking, landscaping, or loading zones unless relief is sought pursuant to applicable Zoning Code procedures.
- J. Maintenance.** The Telecom Operator shall be responsible for maintenance of the Telecom Facility in a manner consistent with the original approval of the Telecom Facility, including but not limited to the following:
1. Any missing, discolored, or damaged screening shall be restored to its original permitted condition.
  2. All graffiti on any components of the Telecom Facility shall be removed promptly in accordance the Newport Beach Municipal Code.
  3. All landscaping required for the Telecom Facility shall be maintained in a healthy condition at all times, and shall be promptly replaced if dead or dying, or damaged [e.g. branches broken off in a storm or otherwise. Tree is still alive, but not what it once was.].
  4. All Telecom Facilities shall be kept clean and free of litter.
  5. All equipment cabinets shall display a legible contact number for reporting maintenance problems to the TelecomFacility Operator.
  6. If a flagpole is used for a Telecom Facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag shall comply with the provisions of the U.S. Flag Code (4 U.S.C. § 1 *et seq.*).

**20.49.070 – Permit Review Procedures.**

- A. Application Procedures.** Applications for Telecom Facilities shall be subject to Chapters 20.50, 20.52, and 20.54 unless otherwise modified by this Section.
- B. Permit Required.** All Telecom Facilities shall obtain a MUP, CUP, LTP, or ZC if not prohibited by subsection 20.49.050.B, depending on the Antenna Class and location, as specified in the Table 4-1:

**Table 4-1**

**Permit Requirements for Telecom Facilities**

Location of Proposed Telecom Facility	Antenna Class and Permit Requirement				
	Class 1 (a)	Class 2 (a) (b)	Class 3 (a) (b)	Class 4 (a) (b)	Class 5 (a)
Facility located in any Zoning District, Planned Community, or Specific Plan within 150 feet of any Residential District or their equivalent residential land use designation within a Planned Community District or Specific Plan.	ZC	MUP	MUP	MUP	LTP
Facility not located in the area identified in Subsection 1 <a href="#">[of what?]</a> but located in or within 150 feet of Open Space Districts (OS), Public Facilities Districts (PF), Parks and Recreation Districts (PR), or their equivalent land use designations within a Planned Community District or Specific Plan.	ZC	MUP	MUP	CUP	LTP
Facility not located in the other areas identified	ZC	CUP	MUP	CUP	LTP

(a) Any application for a Telecom Facility that proposes to exceed the base height limit of the applicable zoning district in which the Telecom Facility is located shall [require the issuance](#)~~require review and action~~ of a CUP by the Planning Commission.

(b) DAS installed on an existing streetlight pole, existing utility pole or other existing structure may be allowed subject to issuance of a Zoning Clearance (ZC) when the Director determines the Facility complies with the screening requirements.

~~(b)~~(c) [\[Comment: I am sure I missed this, but where is it set forth who the review authority is for each of a MUP, CUP and LTP? The staff report indicated the Planning Commission would be the initial review authority only for the “most visible proposals”. How does this work?\]](#)

**C. Application Submission Requirements for Telecom Facilities on City-owned or City-held Trust Properties.** Prior to the submittal for any application for any Telecom Facility located on any City-owned property or City-held trust property, the applicant shall first obtain written authorization from the City Manager or its designee to submit an application.

**D. Fee.** All costs associated with the permit application review shall be the responsibility of the applicant, including any expense incurred for any outside technical or legal services in connection with the application.

- E. Review Process.** Review of applications for all Telecom Facilities in City shall be consistent with Chapter 20.50 (Permit Application Filing and Processing), and the FCC Declaratory Ruling FCC 09-99 (“Shot Clock”) deadlines.
- F. Review of Collocated Facilities.** Notwithstanding any provision of this Chapter to the contrary, pursuant to California Government Code section 65850.6 (as amended or superseded), the addition of a new Telecom Facility to an existing Telecom Facility resulting in the establishment of a Collocated Telecom Facility shall be allowed without a discretionary review provided it meets section 20.49.100. If such a Collocated Telecom Facility does not satisfy all of the requirements of Government Code section 65850.6 and Section 20.49.100, the facility shall be reviewed pursuant the review procedures provided in Table 4-1.
- G. Emergency Communications Review.** At the time an application is submitted to the Community Development Department, a copy of the Plans, Map, and Emission Standards shall be sent to the Chief of the Newport Beach Police Department. The Police Department or its designee shall review the plan’s potential conflict with emergency communications. The review may include a pre-installation test of the Telecom Facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that the Telecom Facility will interfere with emergency communications devices, the applicant shall work with the Police Department to avoid interference.
- H. Public Notice and Public Hearing Requirements.** An application for a MUP, CUP or LTP shall require a public notice, and a public hearing shall be conducted, in compliance with Chapter 20.62 (Public Hearings).
- I. Required Findings for Telecom Facilities.** The following findings shall apply to all Telecom Facilities requiring discretionary review:
1. General. The review authority may approve or conditionally approve an application for a Telecom Facility only after first finding each of the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits), and each of the following:
    - a. The proposed Telecom Facility is visually compatible with the surrounding neighborhood.
    - b. The proposed Telecom Facility complies with the technology, height, location and design standards, as provided for in this Chapter.
    - c. An alternative site(s) located further from a Residential District, Public Park or Public Facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.

- d. An alternative Antenna construction plan that would result in a higher priority Antenna Class category for the proposed Telecom Facility is not available or reasonably Feasible and desirable under the circumstances.
2. Findings to Increase Height. The review authority may approve, or conditionally approve an application for a Telecom Facility which includes a request to exceed the base height limit for the zoning district in which the Telecom Facility is located only after making each of the following findings in addition to the required findings above, as well the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits):
- a. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed Telecom Facility and existing adjacent developments or public spaces. [\[Comment: Is it possible to have an abrupt scale change that is not undesirable?\]](#)
  - b. Establishment of the Telecom Facility at the requested height is necessary to provide service.

#### **20.49.080 – Permit Implementation, Time Limits, Extensions, and Appeals.**

- A. The process for implementation or “exercising” of permits issued for a Telecom Facility, time limits, and extensions, shall be in accordance with Chapter 20.54 (Permit Implementation, Time Limits, and Extensions).
- B. Appeals. Any appeal of the decision of the review authority of an application for a Telecom Facility shall be processed in compliance with Chapter 20.64 (Appeals).

#### **20.49.090 – Agreement for Use of City-Owned or City-Held Trust Property.**

When applying for a permit pursuant to this Chapter, all Telecom Facilities located on City-owned or City-held trust property shall require a license agreement approved as to form by the City Attorney, and as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager, consistent with provisions in the City Council Policy Manual.

Prior to entering into an agreement, the applicant shall obtain a MUP, CUP, LTP or ZC. Upon the issuance of a MUP, CUP, LTP or ZC, as required, and upon entering into an agreement, the applicant shall obtain any and all necessary ministerial permits, including, encroachment permits for work to be completed in the public right-of-way, and building permits, etc. All costs of said permits shall be at the sole and complete responsibility of the applicant. All work shall be performed in accordance with the applicable City standards and requirements.

#### **20.49.100 – Modification of Existing Telecom Facilities.**



Notwithstanding any provision in this Chapter of the Zoning Code, a request to modify an existing Facility that involves the Collocation of new transmission equipment, the removal of existing transmission equipment, or the replacement of existing transmission equipment shall be subject to a ministerial review and approval of a ZC without ~~the~~ processing ~~of~~ any discretionary permit provided that such modification does not substantially change the existing Facility from the original permit for the Facility. A substantial change means a single change, or series of changes over time that exceeds five percent (5%) of the physical dimension of the Telecom Facility approved as part of the original discretionary permit.

Each application submitted under this section for a modification to an existing Telecom Facility shall be accompanied by:

1. A detailed description of the proposed modifications to the existing Telecom Facility(ies);
2. A photograph or description of the Telecom Facility as originally constructed, if available; a current photograph of the existing Telecom Facility; and, a graphic depiction of the Telecom Facility after modification showing all relevant dimensions;
3. A detailed description of all construction that will be performed in connection with the proposed modification; and
4. A written statement signed and stamped by a professional engineer, licensed and qualified in California, attesting that the proposed modifications do not constitute a substantial change of the existing permitted facility.

Any permit issued will be conditioned upon, and may be revoked, and the Telecom Facility shall be required to be removed or restored to its pre-modification condition if:

- a. Any material statement made with respect to the Telecom Facility is false; or
- b. The modifications as actually made would have ~~required~~triggered a discretionary review had the plan for the Telecom Facility depicted the modifications.

#### **20.49.110 – Operational and Radio Frequency Compliance and Emissions Report.**

At all times, the operator shall ensure that its Telecom Facilities shall comply with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. Said information shall be made available by the operator upon request at the discretion of the Community Development Director.

Within thirty (30) days after installation of a Telecom Facility, a radio frequency (RF) compliance and emissions report prepared by a qualified RF engineer acceptable to the City shall be submitted in order to demonstrate that the Telecom Facility is operating at the approved

frequency and complies with FCC standards for radio frequency emissions safety as defined in 47 C.F.R. § 1.1307 *et seq.* Such report shall be based on actual field transmission measurements of the Telecom Facility operating at its maximum effective radiated power level, rather than on estimations or computer projections. If the report shows that the Telecom Facility does not comply with the FCC's 'General Population/Uncontrolled Exposure' standard as defined in 47 C.F.R. § 1.1310 Note 2 to Table 1, the Director shall require that use of the Telecom Facility be suspended until a new report has been submitted confirming such compliance.

Upon any proposed increase of at least ten percent (10%) in the effective radiated power or any proposed change in frequency use of the Telecom Facility by the Telecom Operator, the Telecom Operator shall be required to provide an updated, certified radio frequency (RF) compliance and RF emissions safety report.

A qualified independent radio frequency engineer selected and under contract to the City, may be retained to review said certifications for compliance with FCC regulations. All costs associated with the City's review of these certifications shall be the responsibility of the permittee, which shall promptly reimburse City for the cost of the review.

#### **20.49.120 – Right to Review or Revoke Permit.**

The reservation of right to review any permit for a Telecom Facility granted by the City is in addition to, and not in lieu of, the right of the City to review and revoke or modify any permit granted or approved hereunder for any violations of the conditions imposed on such permit.

#### **20.49.130 – Removal of Telecom Facilities.**

**A. Discontinued Use.** Any Telecom Operator who intends to abandon or discontinue use of a Telecom Facility must notify the Community Development Director by certified mail no less than thirty (30) days prior to such abandonment or discontinuance of use. The Telecom Operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable additional time as may be approved by the Community Development Director, within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility.
2. Transfer the rights to use the Telecom Facility to another Telecom Operator and the Telecom Operator immediately commences use within a reasonable period of time as determined by the Community Development Director.
3. Remove the Telecom Facility and restore the site.

**B. Abandonment.** Any Telecom Facility that is not operated for transmission and/or reception for a continuous period of ninety (90) days or whose Telecom Operator did not remove the Telecom Facility in accordance with Subsection A shall be deemed abandoned. Upon a finding of abandonment, the City shall provide notice to the Telecom Operator last known

to use such Facility and, if applicable, the owner of the affected real property, providing thirty days from the date of the notice within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility.
2. Transfer the rights to use the Telecom Facility to another Telecom Operator who has agreed to reactivate the Telecom Facility within 30 days of the transfer.
3. Remove the Telecom Facility and restore the site.

**C. Removal by City.**

1. The City may remove an abandoned Telecom Facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes at any time after thirty (30) days following the notice of abandonment.
2. If the City removes an abandoned Telecom Facility, the City may, but shall not be required to, store the removed Telecom Facility or any part thereof. The owner of the premises upon which the abandoned Telecom Facility was located and all prior operators of the Telecom Facility shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. In addition, the City Council, at its option, may utilize any financial security required in conjunction with granting the telecom permit as reimbursement for such costs. Also, in lieu of storing the removed Telecom Facility, the City may convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

**D. City Lien on Property.** Until the cost of removal, repair, restoration, and storage is paid in full, a lien shall be placed on the abandoned personal property and any real property on which the Telecom Facility was located for the full amount of the cost of removal, repair, restoration and storage. The City Clerk shall cause the lien to be recorded with the Orange County Recorder, with the costs of filing, processing, and release of such City Lien being added to the other costs listed in this subsection.

# Wireless Telecommunications Facilities Ordinance Update

Code Amendment No. 2012-004

## Evolution of the Mobile Phone



Planning Commission Study Session  
September 19, 2013



# Background



- **Existing Ordinance Adopted in 2002**
- **Change Happens**
  - **More devices, more data, changes in law & case law**
- **Comprehensive update**
  - **Update to reflect changes in law/case law**
  - **Intended to balance needs of community by:**
    - **Providing for increasing demand for wireless networks**
    - **Mitigating the impacts of future telecom facilities**

# Background



- **Amendment initiated by City Council in March 2012**
- **Planning Commission Study Session 9/06/2012**
- **Commission requested:**
  - **Increase use of administrative process**
  - **Simplify**
  - **Conduct outreach**
- **Ordinance re-drafted in June 2013, comments received (attached to staff report)**

# Highlights



- **Defined 5 Antenna Classes**
  1. Screened/Stealth
  2. Visible
  3. Public Right-of-way
  4. Freestanding Structure
  5. Temporary
- **Administrative process for Class 1**
- **Zoning Administrator for most Class 2 locations, Class 3, and Class 5**
- **Planning Commission for Class 2 is located near residential (or not) and Class 4**

# Next Steps



- Ordinance remains a work-in-progress
- Staff plans additional revisions
- Additional stakeholder meeting (if desired)
- Public Hearing with Planning Commission  
*October 17, 2013 (tentative)*



# Discussion



- **Discussion of Draft**
- **Public Comments**
- **Questions?**



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